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PROVINCE OF ONTARIO

ROYAL COMMISSION

ON

THE WORKMEN'S COMPENSATION ACT

HEARINGS HELD AT
TORONTO, ONTARIO

VOL. NO.

4

DATE

28 September 1966

Official Reporters

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Nethercut & Young

Toronto, Ontario

IN THE MATTER OF The Public Inquiries
Act, R.S.O. 1960, Ch. 323

- and -

IN THE MATTER OF an inquiry into and
Report Upon The Workmen's Compensation
Act.

Public Hearings

BEFORE: The Honourable Mr. Justice W. A.
McGillivray, Commissioner, at Room
200, 67 Richmond Street West,
Toronto, Ontario, on Wednesday,
28th of September, 1966.

APPEARANCES:

W.Z. Estey, Q.C.)	
and)	Counsel to the Commission
H.D. Guthrie)	
G.A. Johnston	Secretary

ALSO PRESENT:

J.M. Arnold	For Bell Telephone Company of Canada
T.G. O'Connor	For Board of Trade of Metro- politan Toronto
W. Kennedy	For International Union of Mine, Mill & Smelter Workers (Canada)
C.R. Osler, Q.C.)	For International Nickel Company of Canada
J.G. Goodwin)	
Dr. Hazelwood)	
C.P. Girdwood	For Ontario Mining Association
Ray Carless)	For United Electrical, Radio & Machine Workers of of America
Malcolm R. Gulliford)	
G.N. Yourt	For Rio Algom Mines Limited



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1 --- At 10:00 A.M., the Hearing commenced.

2

3 MR. ESTEY: Mr. Commissioner, the topic we
4 were dealing with yesterday, and will continue with
5 today, is Number 2 in the Notice, Claims Adjudication
6 including accidents arising out of and in the course
7 of employment, secondly, waiting period, thirdly,
8 casual labour and fourth, the reporting of accidents.
9 The Canadian Manufacturers' Association were heard on
10 that topic and I believe had finished and we have some
11 witnesses and submissions on this topic from the
12 Labourers' International Union represented by Mr. Koskie.

13 MR. KOSKIE: With respect to the first part
14 of Claims Adjudication, that is, accidents arising out
15 of and in the course of employment, as you may or may
16 not notice in the brief which we have submitted, we
17 have gone into accidents in various portions of the
18 brief. For example, we have dealt with it under the
19 topic Industrial Diseases and in various other aspects
20 of our brief, and we intend to deal with that at a more
21 appropriate time later on when I see that the Commission
22 has set aside this specific topic for Industrial
23 Diseases. Therefore, I have no comments or submissions
24 at this time to make in respect of accidents arising
25 out of the course of employment. I will save that for
26 later perhaps. At that time, I will have more detailed
27 evidence to adduce to you.

28 Our next submission then, deals with the
29 question of the Waiting Period. We have a very brief
30 submission in this regard, Mr. Commissioner, and I would



1 refer you to page 9 of the brief, Paragraph B. This is
2 the International Labourers' Union, Sub-paragraph 1,
3 headed Short Term Disabilities. If I may read:

4 Section 3(1) (a) of the Workmen's Compensa-
5 tion Act denies compensation to injured employees dis-
6 abled from earning full wages for a period of less than
7 three calendar days. Although the noncompensable dis-
8 abilities under this Section are admittedly minor in
9 terms of long-term financial hardship and deprivation,
10 they are still a great source of anxiety, discomfort and
11 annoyance. Under the principle of workmen's compensation
12 legislation, we see no reason why a workman injured
13 through no fault of his own in the course of employment,
14 should not be compensated for his injury, whether he be
15 disabled from earning full wages for one day or for one
16 year or for ten years. A claim for short-term dis-
17 ability is not necessarily a nuisance claim, and we
18 would submit that the costs saved by this short-term
19 exemption do not begin to justify such a diversion from
20 the true principle of compensation.

21 Further, this short-term exemption has
22 necessitated the withholding of compensation payments
23 for the duration of the three calendar day period, at
24 which time the disability then becomes compensable,
25 computed and payable from the date of the disability.
26 This so-called "waiting period" of three days only
27 serves as an additional "anxiety factor" in all cases.

28 Therefore, it is submitted that Section
29 3(1)(a) should be entirely eliminated from the Act, and
30 injuries should be compensable regardless of the time



1 that a workman is disabled from earning full wages.

2 If I may proceed to the third topic under
3 this heading, Mr. Commissioner, and deal with casual
4 labour, for that I refer to page 30 of the brief.

5 (F), Sub-paragraph (1) headed Casual Workers.

6 Workmen presently employed as casual labourers
7 are excluded from the provisions of Part 1 of the Act by
8 virtue of Section 3(4). It is our opinion that such an
9 exclusion is unfair in that it places an undue financial
10 burden upon a workman thus employed by forcing him to
11 seek redress in the Courts for injuries suffered in the
12 course of his employment. Further, it is often these
13 employees, many of whom are lacking in any particular
14 skill, who are least able to bear such a burden. We
15 therefore recommend that this exclusion be removed from
16 the Act.

17 THE COMMISSIONER: There is no definition of
18 "casual", is there?

19 MR. KOSKIE: No, there isn't, interestingly
20 enough, Mr. Commissioner. My clients, when we were dis-
21 cussing the contents of this brief, asked me if there
22 was a definition of "Casual Labour" and I, of course,
23 after perusing the Act, was unable to find one. When
24 we were discussing this recently, my clients did suggest
25 to me that one of the things the Act should provide for
26 is a definition of Casual Labour, because it certainly
27 has caused them some concern. Although we have not in-
28 cluded this in the brief it was discussed subsequent to
29 the preparation of the brief and I would ask the
30 Commissioner to take that into consideration. Our clients



1 certainly have been perplexed by the lack of that partic-
2 ular definition. I think it would be of some assistance
3 to labour in general.

4 THE COMMISSIONER: I think it is interpreted
5 by the Board that a casual labourer is any labourer over
6 which the employer has no direct - well, certainly, this
7 comes within it, where he has no direct supervision and
8 is more or less in the measure of an independent action
9 by the labourer they class as casual labour. Whether
10 they also probably do class as casual labourers, labour-
11 ers who just work for two or three days at a time without
12 any contract or any type of contract, I don't know. We
13 will find out from the Board.

14 MR. KOSKIE: Thank you, Mr. Commissioner.

15 Now, if I may deal with the fourth item,
16 Reporting of Accidents, in that respect I refer the
17 Commission to page 17 of our brief, paragraph D, Sub-
18 paragraph (1), headed Accident Reports. If I may read:

19 In many instances, the most substantial
20 piece of evidence before the Board in a compensation case
21 is an accident report filled out by the employer. I
22 should add there, Mr. Commissioner, an accident
23 report filled out by the employer and the employee. I
24 understand that the Board does require the employee as
25 well to fill out reports. I think that should be in-
26 cluded there. It has been the experience of some of
27 the members of our Union that these reports are often
28 biased in favour of the employer; significant factors,
29 such as the condition of the equipment or the workman's
30 previous medical history, are often omitted or over-



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1 looked. Further, these reports, invariably written in
2 English, are often handed for signing to an injured
3 workman whose language is other than English, and thus
4 he unknowingly approves a report which does not always
5 give a true picture of the actual accident. In more
6 extreme situations, employers have been known not to
7 complete a report at all, and have induced injured
8 workmen from reporting lost time accidents themselves by
9 giving them light duty work, until it is too late for
10 them to establish their entitlement under the provisions
11 of the Act.

12 We would respectfully urge the Board
13 to carefully scrutinize the conditions under which all
14 accident reports are filed by employers and to
15 particularly ensure that an injured workman fully
16 comprehends any employer's report which he might have
17 signed. Also, we would strongly recommend that no
18 workman be precluded under Section 21 (1) of the Act
19 from the right to compensation by reason of being wrong-
20 fully induced by the employer not to report an otherwise
21 compensable accident.

22 THE COMMISSIONER: How are you going
23 to take care of either one of those? What am I to
24 recommend that is going to take care of them?

25 MR. KOSKIE: I think, Mr. Commissioner, it
26 is a question of policing this really.

27 THE COMMISSIONER: There is nothing
28 that I can do or I think that the Board can do to ensure
29 that that recommendation that you make be carried out.
30 The only thing is if it turned out that that was the



1 circumstance, the man had not fully comprehended what he
2 had signed, then I assume the Board would take that
3 into consideration and so far as the second one is
4 concerned I presume that that is already coming before
5 the Board on numerous occasions and that they are taking
6 into consideration again whether or not the accident had
7 been reported or deliberately withheld. What do you
8 suggest that this Commission could do about it?

9 MR. KOSKIE: I am not so sure exactly what
10 recommendations can in fact be made except, as I say,
11 it may be more of a policing situation. The union has
12 found many situations of this nature and as a result the
13 claimants have been penalized and their claims have not
14 been processed.

15 THE COMMISSIONER: It may call for some
16 comment.

17 MR. KOSKIE: I think it would call for a
18 comment. If you were unable to make any specific
19 recommendation as far as the Act is concerned I think it
20 is definitely worth commenting upon. It would require
21 further policing by the Board itself.

22 Subsection (2) on page 18 of the brief,
23 Investigations by the Board. This does have some bearing
24 on accident reports, Mr. Commissioner.

25 THE COMMISSIONER: On the reporting of
26 accidents how about the other abuse that is said to occur
27 when workmen don't report or at least come in on the
28 following Monday or some time and say an accident
29 occurred on the previous Thursday or Friday and they
30 didn't report it? Have you considered that situation?



1 We have had representations here to indicate that some
2 regulation should be made to penalize the workman who
3 claims to have received an accident during the course
4 of his work and didn't report it until some days later.

5 MR. KOSKIE: We have had experience with
6 this, Mr. Commissioner, although we have not made any
7 specific recommendation on that, but we can assist the
8 Commission on this, because especially in the labour
9 union where a majority of its members do not speak the
10 English language nor can they read it, they are as well
11 unfamiliar with the procedures or requirements under The
12 Workmen's Compensation Act. As a result we have found ---
13 and I have found this as a solicitor --- that quite often
14 these persons do not report the accidents merely because

15 they don't know that they have to, and they are not
16 even sure or aware in many cases that they do have a
17 right to claim compensation under The Workmen's
18 Compensation Act.

19 I would submit, Mr. Commissioner, that
20 surely regulations ought to be enacted which would
21 prevent anyone from taking unfair advantage of the Act.
22 I don't think the labour union would oppose such things.
23 On the other hand, this would, of course, have to be a
24 discretionary matter because for the reasons I have
25 given you, because of the fact that these people are not
26 aware of their rights, although the law is that everybody
27 is presumed to know the law and, of course, be aware of
28 their rights. On the other hand, I think because we are
29 dealing with workmen many of whom are immigrants that
30 this should definitely be taken into consideration.



1 THE COMMISSIONER: Some of these representa-
2 tions that are made to us say that 75 per cent of these
3 presumed accidents are reported when the workman comes
4 to work on Monday morning. The suggestion is made that
5 it is not something that occurred on the previous Friday
6 or Thursday, but is something that occurred during the
7 weekend.

8 MR. KOSKIE: I am sure that would happen.

9 THE COMMISSIONER: That is why ⁱⁿ some of the
10 submissions there is a penalty requested in the event
11 that a workman suffers an accident on the job and
12 doesn't report it. It seems to me it is in the same
13 class as this situation that you are raising a question
14 about where the employer doesn't report it.

15 MR. KOSKIE: I quite appreciate that, Mr.
16 Commissioner. On the other hand, one must take the
17 situation: Assuming that all of a sudden Monday morning
18 we have a workman reporting an accident, right away one's
19 suspicions are raised as to whether or not that accident
20 did occur during the course of employment or whether it
21 did occur on the weekend, but I would submit that even
22 under the present legislation that it is still incumbent
23 upon the workman to show not only through his own
24 evidence but through the evidence of others that this
25 accident did, in fact, occur while he was working. We
26 have had situations like this before, I may say, where
27 accidents were reported a week or two after the actual
28 accident occurred, and there has been a heavy onus
29 imposed upon the workman to satisfy the Review Committee
30 and the Appeal Tribunal that this accident did not take



1 place while he was home or in other similar circumstances.

2 So I still think that as far as the Board
3 is concerned the onus is still there right now; in other
4 words, he has to have substantiating supporting evidence
5 that this accident did occur while he was working. I am
6 sure if he was working with his fellow workers, which
7 is more often the case, one fellow is not working alone,
8 those workers may or may not be prepared to say that the
9 accident did occur while he was working.

10 Perhaps Mr. Stefanini, Mr. Commissioner,
11 might wish to comment on this point. Mr. Stefanini is
12 the recording secretary and our business agent of the
13 Labourers' Union, local 183, and I should point out that
14 Mr. Stefanini has had vast experience in dealing with the
15 Italian section of the Labourers' Union and can assist
16 the Commission, I believe.

17 MR. STEFANINI: Mr. Commissioner, what you
18 are saying is true. It is my experience that many
19 workers report on Monday on accidents that happened
20 on Friday, but it is also my experience that they do not
21 think the accident is serious enough to report on Friday,
22 so what happens during the weekend, they feel worse and
23 then when they go back on Monday they report it. Some-
24 times I believe it is because they do not consider the
25 accident serious enough to report it at the moment it
26 happened.

27 MR. KOSKIE: Mr. Commissioner, Mr. Michael
28 Lynch who is a member of the Labourers' Union, Local 183
29 and who himself has been under compensation wishes to
30 make some comments on that point as well.



1 MR. LYNCH: Thank you, Mr. Commissioner. I
2 think I can help the Commission by pointing out that as
3 Mr. Stefanini said, some of these Italian immigrants,
4 the great language barrier is there and they don't fully
5 understand what their rights are and what the procedures
6 are for reporting accidents. On one occasion I was a
7 foreman on the subway and I had a fellow working for me
8 who was an Italian and he worked for two days on Thursday
9 and Friday and he came to work on Monday morning and he
10 had a bedroom slipper on. I asked him what was the idea
11 of the bedroom slipper and he said because he had put a
12 jackhammer through his toe on the Friday, but he didn't
13 know enough to report it to me. If this can help you, I
14 will be glad to put it forward.

15 MR. KOSKIE: If I might continue further,
16 Mr. Commissioner, on page 18:

17 Investigations by the Board

18 We would be foolish indeed to suggest that
19 in the efficient administration of the Act, no
20 investigations were necessary to prevent abuses by
21 injured workmen receiving compensation for partial
22 or total disability. Human nature being what it is,
23 there will always be those few workmen who will attempt
24 to "beat the system" and secretly take other employment
25 without a proportional adjustment in their compensation
26 payment. However, in some instances the evidence
27 collected by the investigating representatives and relied
28 on by the Board has been, in our opinion, of questionable
29 validity. For example, in the case of one of our injured
30 members receiving compensation, an investigating



1 representative took the statement of the man's retarded
2 child at his place of residence to the effect that "daddy
3 was at work"⁰⁹ as evidence that the injured workman was
4 secretly employed while receiving full compensation.

5 With great deference we would suggest that
6 the Board discourage any questionable practices of their
7 investigating representatives and carefully consider all
8 evidence placed before them as to its validity.

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1 Mr. Commissioner, Mr. Michael Lynch, if I
2 may call upon him again, wishes to comment in respect of
3 that particular matter.

4 MR. LYNCH: Well, all that happened on
5 this particular occasion, Mr. Commissioner, was that a
6 special representative from the Compensation Board, Mr.

7 Jeune came to my house and I had gone out, gone down
8 to the Union office, as a matter of fact, and my oldest
9 daughter, who is retarded, if someone comes to the house
10 she says, "Daddy has gone to work". Mr. Jeune asked,
11 "Where is your daddy?" and she said, "Daddy is at work",
12 and he assumed immediately that I had found a job and
13 I was at work when I was unable to work.

14 MR. KOSKIE: How old was your daughter
15 at the time this happened?

16 MR. LYNCH: She was fourteen, but she has
17 the intelligence --

18 THE COMMISSIONER: Were you deprived of
19 compensation then because of what your daughter said?

20 MR. LYNCH: No, but it did lead --

21 THE COMMISSIONER: To an investigation?

22 MR. LYNCH: Yes, and it did lead to the
23 idea I had found a job.

24 THE COMMISSIONER: And when you made an
25 investigation nothing had happened?

26 MR. LYNCH: No. I clarified it with Mr.
27 June when I found out she had said it.

28 THE COMMISSIONER: Investigations must
29 be made and they have to be reported and then they are
30 assessed by the Board if any proceedings are taken.



1 Some people have suggested that the Board doesn't do
2 enough investigation in matters of this kind.

3 MR. KOSKIE: I would like to call on Mr.
4 Stefanini again with respect to reporting of accidents
5 by employers and employees.

6 MR. STEFANINI: Yes, Mr. Commissioner,
7 there is an employer's report and the employee's report,
8 but it is our experience, especially with newcomers,
9 Italians, when they have received their report, they go
10 to the employer and ask them to fill it in, with the
11 result that the employee's report is exactly the same as
12 the employer's report and it is my experience that their
13 claim has been refused because the employee's report
14 wasn't the true version of the accident. There is
15 difficulty proving there was an accident and when they
16 go to their own employer, the employer, naturally, have
17 their own version, and when the employee signs it, he
18 doesn't know what he is signing very often, and that is
19 because of the lack of knowledge of the English language.

20 MR. KOSKIE: I have no further submission
21 to make on these points, Mr. Commissioner, save and
22 except any questions counsel may wish to ask of myself
23 and my clients.

24 MR. ESTEY: The first problem that your
25 submission raises is this waiting period, and I take it
26 you have made this submission bearing in mind the practice
27 in other fields on this kind of insurance by having
28 what is referred to as a deductible period or deductible
29 amount, and I am wondering is you can help us as to what
30 safeguard the Act should have in it as to a waiting period.



1 or do you think we should eliminate the waiting period?

2 MR. KOSKIE: Well, our submission is that
3 the waiting period should be eliminated. I think that in
4 many cases we found through our experience that many of
5 these persons, because they are unemployed for short
6 periods of time, the question of money is very important
7 to them as far as day-to-day existence is concerned, and
8 this has imposed an undue hardship. I don't think any
9 expense incurred by the Board in eliminating the three-
10 day waiting period would be very heavy on the Board. And
11 if there is any question of fraud, the Board, of course,
12 has recourse to recover the money they have paid out.

13 MR. ESTEY: You have no suggestions to
14 give on that particular point?

15 MR. KOSKIE: The Union has not kept any
16 facts or statistics on that particular point.

17 MR. ESTEY: I wonder if you have anything
18 to say on the mechanics involved in this kind of a
19 problem? Since the deduction is made by payroll estimates
20 and casual labour goes through the employer's payroll
21 accounting, is there any problem in eliminating sub-
22 section (4) of section 3 as far as the Labourer's Union
23 is concerned?

24 MR. KOSKIE: I don't think there is any
25 practical problem.

26 MR. ESTEY: Casual labour can be pretty
27 casual, I take it.

28 MR. KOSKIE: I appreciate that. On the
29 other hand, even though he is a casual labourer, he is
30 still a workman and under the principle of the Workmen's



1 Compensation Act he is still a workman, whether working
2 for an employer for two days or twenty days. I don't
3 think it ought to matter that he is a casual labourer;
4 it shouldn't put him in a different category; he is,
5 nonetheless, a workman.

6 MR. ESTEY: You are not making any
7 distinction between the man who comes along and shovels
8 snow for a couple of hours on the one end of the spectrum;
9 on the other hand, there is the kind of workman who does
10 the same work as other people on the payroll do but he
11 does it only for a short time.

12 MR. KOSKIE: I think the Workmen's
13 Compensation Act covers workmen in general and I don't
14 think there should be any distinction.

15 MR. ESTEY: It is for the purposes of the
16 employer's trade or business, and your submission is that
17 not only should the words "casual nature" be eliminated
18 but it should also eliminate the person who works on an
19 infrequent or intermittent basis on other than the
20 employer's usual trade.

21 MR. KOSKIE: My point is, having discussed
22 this with my clients, that assuming we have a situation
23 where a person is employed, shall we say, on a casual
24 basis for one week only, and we will say for janitorial
25 services, this is not really related to the employer's
26 main business. It should be, but if any person were
27 injured during the course of time, under the Act, he
28 would not be entitled to compensation. Now, where do we
29 draw the line? As Mr. Estey has put it, those who are
30 employed for only two or three hours are not entitled



1 to benefits under the Act. This raises a problem because
2 of the lack of definition of "casual labourer", and it may
3 be that a person who is employed, as Mr. Estey put it,
4 on shovelling snow may not be entitled to compensation
5 if he is injured in the course of employment for him. He
6 may be required to go from door to door as a snow
7 shoveller, but he is still a workman, and because he is
8 employed only for a couple of hours a day he is not
9 entitled to the benefits of the Act.

10 MR. ESTEY: Perhaps Mr. Stefanini or
11 Mr. Lynch could help us on this. As a practical matter,
12 on a construction project - I take it your trade Union
13 is largely involved in the construction industry?

14 MR. STEFANINI: Yes

15 MR. ESTEY: As a practical matter, a
16 man who gets hurt working for a general contractor or
17 sub-contractor, how does he report that accident?

18 MR. STEFANINI: Many times they come
19 down to the Union office and we have had them fill out
20 their own report. Many times they have somebody at home
21 who goes to school and with the help of children they
22 fill out their own report. But with newcomers, they are
23 new members of the Union and they don't know their rights
24 and they don't know what the Union can do for them and
25 they go to the employer and ask them to fill out the
26 report, because they trust them.

27 MR. ESTEY: And they sign that report
28 whether or not they can always read it?

29 MR. STEFANINI: Yes.

30 MR. ESTEY: When you fill the report out



1 in the Union office, is that on a report form?

2 MR. STEFANINI: Yes.

3 MR. ESTEY: Do you have a supply of
4 reports?

5 MR. STEFANINI: It is mailed out by the
6 Compensation Board.

7 MR. ESTEY: The Board would send it out
8 after they knew that an accident happened, but what
9 happens in the case where a man doesn't have a report
10 form from the Board? Does the Union send a letter in
11 saying the man has been hurt?

12 MR. STEFANINI: When a member of the
13 Local comes to me and says they have had an accident,
14 then immediately we call somebody at the Compensation
15 Board and inform him of the Company, the time and the
16 place.

17 MR. ESTEY: And from that point on you
18 get the forms?

19 MR. STEFANINI: Yes. But again we can
20 do it only with those who bring it to our attention. We
21 don't know about those that are not brought to our
22 attention.

23 MR. ESTEY: In how many languages do you
24 conduct your meetings of the Union in Toronto?

25 MR. STEFANINI: Two, sometimes three.

26 MR. ESTEY: English, Italian?

27 MR. STEFANINI: And Portuguese.

28 MR. ESTEY: When you get a man who speaks
29 only Maltese, you deal with him separately?

30 MR. STEFANINI: We don't have any



1 experience with Maltese. But, for instance, some of our
2 immigrants may speak French or German, but the majority
3 are Italians and English people.

4 MR. ESTEY: When these accidents occur,
5 for example we read recently at one of the large hospitals
6 a man was killed in connection with the foundations. When
7 those accidents are reported in the first instance by the
8 employer, I understand that the employer, being human, is
9 naturally not going to put himself in a bad light by his
10 report, and that report is a poor basis for the Board to
11 adjudicate the claim.

12 MR. STEFANINI: Yes.

13 MR. ESTEY: But the workman, through the
14 Trade Union, has the right to make a report, and I suppose
15 one of the benefits of the appeal system is that all the
16 facts come out.

17 MR. STEFANINI: Yes.

18 MR. ESTEY: Sometimes they come out at
19 that stage.

20 MR. STEFANINI: Yes.

21 MR. ESTEY: How do you overcome the
22 language problem when you have a large immigration flow
23 of something in the order as we have now, of 200,000 a
24 year? How do you overcome this problem in legislation
25 about this language barrier?

26 MR. KOSKIE: We could perhaps adopt a
27 similar suggestion which we indicated before that, where
28 possible, the reports be also obtainable in the language
29 of the person involved, and I think this would not be
30 too difficult for the Board to do, because I think that



1 the number of languages they have to deal with would not
2 be that excessive.

3 MR. ESTEY: May I ask you for your
4 suggestions on this, that at the bottom of the form that
5 is signed by the workman there should be something to
6 the effect that, "Do not sign it unless it is in your
7 language," that he understands it.

8 MR. KOSKIE: As long as he understands
9 the importance and significance of signing this document
10 and that he understands it; and if there were some
11 warning given to them either in writing or orally, at the
12 time they executed it, I think they would be more on
13 their guard, and if they didn't understand it they would
14 make further inquiries.

15 MR. STEFANINI: I am in agreement with
16 this warning. I believe in this employee's report there
17 should be a warning that this report should not be taken to
18 the employer.

18 MR. ESTEY: You reduce the risk of error?

19 MR. STEFANINI: Yes.

20 MR. ESTEY: When a large insurance scheme
21 such as this, handling \$100,000,000. a year, is based
22 upon speedy reporting so that the supervisors of the
23 Board can find out all about the accident, the quicker a
24 report is in the better everybody's interest is served.

25 MR. KOSKIE: Yes, we quite agree with
26 that.

27 MR. ESTEY: Do you think it is possible
28 to have something in section 21, short of an absolute
29 denial of rights, for failure to report to get an
30 employee to make his report as quickly as he can before



1 he leaves the premises?

2 MR. KOSKIE: As I indicated earlier, the
3 problem that has confronted us in this situation is not
4 the fact that these persons did not want to report an
5 accident, it is the fact that they are not aware that
6 they must do so. Perhaps it is a question of ignorance
7 of the law, but these people certainly do want to obtain
8 compensation as soon as they can and, of course,
9 appreciate that before they can do so, they must report
10 the accident to someone.

11 MR. ESTEY: The Act says six months at
12 the present time. Have you any comments to make on that?

13 MR. STLFANINI: I would like to report
14 an example that happened not too long ago. On the subway
15 project there was a workman who had just come from Italy
16 and he had a broken arm. He was a member of the Compens-
17 sation and what the employer did was put him on as a
18 flagman so the accident wasn't reported to the Workmen's
19 Compensation. If the accident wasn't reported by the
20 Union to the Compensation Board, what happens after two
21 years' time?

22 MR. ESTEY: Now, what do you suggest
23 should be placed in the regulation to cover that kind of
24 situation?

25 MR. KOSKIE: I think the problem has been
26 this, that although there is a time of six months, we
27 have found it is the employer who is aware of the six-
28 month period and not the employee.

29 MR. ESTEY: That is a separate section
30 which deals with him reporting, that is reporting under



1 section 115, as we discussed yesterday. I was wondering
2 whether you thought it adequate, whether the six months
3 should be reduced or extended, or what are your views?

4 MR. KOSKIE: Well, we haven't discussed
5 this before in any great detail, Mr. Commissioner, these
6 particular sections. We believe, though, that the six-
7 month period as it stands under section 21 (1) is, of
8 course, subject to the discretion of the Board under
9 sub-section (5). It may very well be that if a claim is
10 not made within a six-month period but is made subsequent
11 to that time there could be some relief.

12 MR. ESTEY: So the six months isn't
13 really very important?

14 MR. KOSKIE: The Union hasn't really been
15 very much concerned with the six-month period.

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MR. ESTEY: All right, then, let's

2 turn our minds to the three-day period. Three days, of
3 course, is very short and in the case of the jackhammer
4 example the time would be gone before the employer had
5 known that the man had put a hammer through his toe.
6 On the other hand, the \$50 fine seems rather light. Do
7 you have any comments on that section?

8 THE COMMISSIONER: What section was
9 that?

10 MR. ESTEY: Section 115. Subsection
11 (1) deals with the three-day period and subsection (2)
12 is the \$50 fine.

13 MR. KOSKIE: Referring to the fact
14 that the employer must within three days after the
15 accident file a report.

16 MR. ESTEY: Yes, giving five items
17 of information. Obviously it should say three days
18 after notice to the employer. If the employer didn't
19 know about it, you could hardly fine him for not
20 reporting, but apart from that do you have any comments
21 on how that section has worked or is failing to work in
22 the scheme of the Act?

23 MR. KOSKIE: Perhaps Mr. Stefanini
24 can help us on that.

25 MR. STEFANINI: Well, I conclude
26 that Mr. Shegaliak complained to the Board about his
27 employer. We don't know what happened after that.

28 MR. ESTEY: Has your union ever seen
29 the Board invoke the next subsection of that same
30 provision that if your employer fails to perform this



obligation the Board can charge the compensation to the employer?

MR. STEFANINI: No, I don't ^{think} to the best of my knowledge that has never happened.

MR. ESTEY: The Bell Telephone on pages 3 and 4 of their brief have a comment on the subject before the Commissioner at this time.

MR. ARNOLD: J. M. Arnold, Mr. Commissioner, of the Bell Telephone. I believe that as far as this subject of claims adjudication is concerned that our brief only touches on item 1, that is, "accidents arising out of and in the course of employment", and I will read from the brief. I would just like to mention a couple of items in the introduction to our brief. First of all, that the company employs approximately 42,000 employees of which close to 24,000 work in the Province of Ontario. And all of whom are covered by the Ontario Act, the rest, of course, being covered by the Quebec Compensation Act. We are an employer at the present time, anyway, under Schedule 2.

Then, reading from the brief on page 3, we say:

Amendments have been necessary and will be necessary from time to time to keep the amount of compensation provided in line with current economic conditions. We believe, however, that in the interests of workers as well as employers the Act should continue as a compensation act solely for those disabilities which can clearly be identified as having "arisen out of and in the course of employment". Any broadening of the



1 definition of "accident" would have the effect of
2 assessing employers for the costs of disabilities for
3 which they have no responsibility.

4 In an amendment to the Act in 1963
5 the definition of an accident was changed to read as
6 follows:

7 (a) "accident includes,

8 (i) a wilful and intentional act,

9 not being the act of the workman,

10 (ii) a chance event occasioned by

11 a physical or natural cause, and

12 (iii) disablement arising out of and

13 in the course of employment.

14 We recognize that the only change was to replace the word
15 "fortuitous" with "chance", and to include in this
16 section "disablement arising out of and in the course of
17 employment". We have been given to understand that
18 there was no intent ⁱⁿ 1963 to include those disabilities
19 where there was no causal relationship to the job being
20 performed. To quote Mr. G. S. Black of the

21 Compensation Board, in the April 1966 News Bulletin -

22 "Entitlement, however, under

23 this Amendment requires that

24 the disablement which a workman

25 suffers must have some causal

26 relationship with the work being

27 performed. It is not sufficient

28 that the disablement comes on

29 during work; rather, there must

30 be something about the work which



1 can be considered to have caused the
2 disablement. The cause might be
3 strenuous work, awkward position,
4 unaccustomed strain or even a move=
5 ment arising out of the work which
6 is reasonable to consider may have
7 caused the disablement".

8 We are in complete agreement with this
9 statement, and submit that it should be strictly adhered
10 to. However, regardless of the intent, in our experience
11 the 1963 Amendment has led to the belief amongst workers
12 as well as claims assessors that almost any disability
13 which becomes apparent at work is compensable under the
14 Act. While this interpretation may be considered to be
15 in the administrative area, we believe it goes beyond
16 that because it illustrates the necessity of the wording
17 of the legislation being such that it leaves no doubt
18 as to its real intent.

19 The difficulty in interpreting this part
20 of the Act is most apparent in those cases where there has
21 been no clear accidental event. To illustrate, an
22 employee bends down to pick up a 10-pound weight with no
23 awkward movement such as a twist or a slip, but on
24 straightening he becomes aware of an acute pain in his
25 back. Investigation may show a congenital weakness
26 or a degenerative disorder. We believe that it would be
27 discriminatory to accept this kind of disability as
28 being compensable under the Act when there is no
29 compensation for the employee who suffers a heart attack
30 while at work or for the employee who feels he caught



1 influenza from a fellow employee. We believe that it
2 would be equally disastrous to attain consistency of
3 treatment by broadening the Act to include cases such as
4 the latter examples just because the disability became
5 apparent while the employee was at work. Our reasons
6 for this view may be summarized as follows:

7 (a) It would destroy the original concept
8 of Workmen's Compensation which was,
9 that regardless of who was to blame
10 for the accident the employer would
11 be responsible through the Compensation
12 Act for payment, a concept which is
13 justifiable only when compensation
14 is limited to those disabilities which
15 can clearly be demonstrated as arising
16 out of and in the course of employment.

17 (b) Most employers hire a number of persons
18 who have existing physical disabilities.
19 The broadening of the definition of
20 "accident" could well have the effect
21 of making employers unwilling to assume
22 the risks of hiring or retaining such
23 employees. This would almost certainly
24 have an adverse effect on the employment
25 opportunities of such persons.

26 (c) It would appear to be as unfair to
27 customers and shareholders for an
28 employer to be assessed with the
29 expense of a non-industrial injury,
30 as it would be to workers if there were



1 no protection for those injuries and
2 diseases attributable to his employment.

3 I think that is all that arises out of "accidents in the
4 course of employment".

5 THE COMMISSIONER: These suggestions do not
6 call for a change in the wording of the section so much
7 as for a direction to the Board as to how they must
8 interpret the section.

9 MR. ARNOLD: Yes, Mr. Commissioner. I think
10 we realize that it is largely an administrative matter,
11 but I can say ---

12 THE COMMISSIONER: You don't like the way it
13 is administered?

14 MR. ARNOLD: No, but I can say, too, that
15 we would be very happy if there is any amendment which
16 would make the definition of "accident" clearer so that
17 you would cut down on this grey area that has been
18 referred to. My own feeling is that regardless of how
19 you define it unless you have some judicial body outside
20 of the Board to which you can appeal it is going to be
21 very difficult to get a uniform administration of an
22 accident.

23 THE COMMISSIONER: Once you start appealing
24 to a judicial body on this question of whether or not
25 it was ---- because there must be a great many cases in
26 this grey area --- you certainly bring a major change
27 in the administration of the Act or in the results of
28 the Act.

29 MR. ARNOLD: Yes.

30 THE COMMISSIONER: Are you one who advocates
such a change?



1 MR. ARNOLD: It is not advocated in our
2 brief, but it does seem to me on this particular point I
3 can't see any other way of getting the definition in
4 such a form that it would make every situation clearer
5 as to whether it is covered or not. If you have a
6 series of appeals involving various types of cases you
7 finally get to the point where it would be better, but
8 that is outside of our brief. We do not consider
9 appealing.

10 THE COMMISSIONER: You are under Schedule
• 11 2. Your company would be the one that would be fighting
12 all these claims if they turned up.

13 MR. ARNOLD: Yes, sir. Probably we are a
14 little more sensitive being under Schedule 2 to the
15 way that "accident" is interpreted.

16 THE COMMISSIONER: Yes.

17 MR. ARNOLD: How long we are going to
18 remain under Schedule 2 I don't know.

19 THE COMMISSIONER: That is one of the things
20 I am asked to consider.

21 MR. ARNOLD: Yes.

22 THE COMMISSIONER: At the moment if you
23 disagree with one of these decisions of the Board you
24 have a right, of course, to appeal.

25 MR. ARNOLD: Yes.

26 THE COMMISSIONER: Do you take appeals
27 in these cases?

28 MR. ARNOLD: I believe we do very seldom.
29 I think possibly we may be in a little different
30 position in that regard because of the fact that so



1 many of our employees are long-term employees and in
2 addition to that we have our own benefits program which,
3 if the Act doesn't cover, it covers, but I think it is
4 principally because of our good employer-employee
5 relations that we do very little appealing.

6 MR. ESTEY: Their position is that they
7 would like some kind of a neutral representative in
8 those hearings to make sure that the fund which in your
9 case is supplied by the Bell Telephone Company is not
10 burdened with claims which are not within the statutory
11 definition, but that you don't want the Bell to get into
12 the arena because of the employee relations.

13 MR. ARNOLD: Yes, I would think that is a
14 fair statement.

15 MR. ESTEY: And I take it that you have
16 another problem, because of the disseminated work force
17 which the Bell has, of finding out about accidents
18 within the time limit of three days and getting the
19 circumstances within the knowledge of the Bell so that
20 you could oppose some claims.

21 MR. ARNOLD: I believe that has been a
22 problem.

23 MR. ESTEY: Because you have not many
24 linemen, but you have installation men who work by
25 themselves, do they not?

26 MR. ARNOLD: Yes.

27 MR. ESTEY: And your plant is scattered
28 all over the province of Ontario so that the man is
29 not working under a foreman and beside a fellow worker
30 in circumstances where you have supervision, isn't that



1 one of your problems?

2 MR. ARNOLD: Yes, many of them are miles away
3 from a supervisor.

4 MR. ESTEY: So the Bell finds itself, I
5 think, in the difficulty of not really being able to
6 help administer the Act and this falls to the Board and
7 you are asking really that the Board enforce what you
8 think is the meaning of that term?

9 MR. ARNOLD: Yes.

10 MR. ESTEY: As regards legal attack on the
11 thing, I suppose it is possible that the Board assesses
12 you because that is what happens under Schedule 2 with
13 the compensation for an injury which you think is
14 outside the statutory definition, I suppose you could
15 quash the Board order, anyway, by going to court, could
16 you not?

17 MR. ARNOLD: Yes, I think we could. I don't
18 believe we ever have.

19 MR. ESTEY: You never tried that for the
20 same reason probably?

21 MR. ARNOLD: Yes.

22 THE COMMISSIONER: The one or two cases in
23 which it has been tried have not been very successful?

24 MR. ARNOLD: Involving our company, Mr.
25 Commissioner?

26 THE COMMISSIONER: No, not involving your
27 company.

28 MR. ESTEY: Involving a fortiori. Mr. Arnold,
29 while we have you here I would like to ask you if you
30 have any comments on this question of the waiting period.



1 There is nothing in your brief that I notice

2 MR. ARNOLD: Frankly I don't think I am
3 qualified to make a statement on that.

4 MR. ESTEY: Fine.

5 MR. ARNOLD: I might say that we have a
6 separate department in Montreal that does all the
7 processing and deals directly with the Board.

8 MR. ESTEY: Fine, thank you, Mr. Arnold.

9 The Board of Trade of Metropolitan Toronto.

10 MR. O'CONNOR: Mr. Commissioner, the Board's
11 brief deals with the definition of an accident at page
12 3. Mr. Commissioner, there is considerable controversy
13 over the extent of coverage there should be under the
14 fund. If I might pause right there, Mr. Commissioner,
15 I should point out to you that our submission respecting
16 the definition of "accident" is not one admitted with
17 complete unanimity within the Board. There is a
18 divergence of opinion within the Board respecting the
19 submissions made here. I think I should point that out
20 to you.

21 At one extreme, there are those who appear
22 to argue that the definition of accident under the Act
23 should be so construed that if disability occurs while
24 at work, the disability is compensable. At the other
25 extreme, it is argued that the definition means that
26 the nature of the disability must be reasonably related
27 to the nature of the work being performed. In our
28 view, neither of these is tenable. If a workman bends
29 down to tie his shoelace and "flips a disc", he should
30 no more be entitled to compensation than if the same



1 disability happened for the same reason while he was at
2 home. Similarly, a workman should be entitled to
3 compensation if, while performing work, he suffered a
4 disability even though the work being performed would not
5 reasonably entail the risk of such a disability to the
6 reasonably physically healthy person.

7 I don't give an example, but I think one
8 example that can be given has been mentioned this morning.
9 If a man bends down to pick up a weight this would argue
10 that even though this weight amounts to no more than two
11 pounds and in picking it up he slips a disc ---

12 THE COMMISSIONER: Or if he leans over to
13 take a pen out of something.

14 MR. O'CONNOR: That is right, if the movement
15 caused it. I might further point out that what we are
16 saying here does not include --- and I thought of this
17 while the brief was being prepared --- that if a person
18 is employed and he is preparing a brief and while
19 preparing it he suffers a heart attack there should not
20 be any compensaation there.

21 THE COMMISSIONER: There shouldn't be?

22 MR. O'CONNOR: There shouldn't be.

23 THE COMMISSIONER: What is the difference?

24 MR. O'CONNOR: Because what this employee was
25 doing had nothing whatever to do with a heart attack.
26 We conclude by saying:

27 "It is our view that a disability should
28 only be compensable when at the point in
29 time of the accident's occurrence the
30 employee was carrying out the employee



1 duties. There is, however, a real need
2 to distinguish between an industrial
3 accident and an illness that manifests
4 itself on the job."

5 We next deal with the waiting period.

6 The three days which now constitute the
7 waiting period is analagous to "a deductible" item in
8 insurance policies. However, once the disability has
9 continued for this length of time, compensation is payable
10 from the time of disability, the retroactive feature
11 that lends force to the argument that there should be no
12 waiting period since it creates the inequity of an
13 employee receiving no compensation at all if his
14 disability falls short of expiry of the waiting period,
15 whereas the employee whose disability only slightly
16 exceeds the waiting period is paid compensaation for all
17 time lost.

18 Our view is that the elimination of a
19 waiting period would inundate the Workmen's Compensation
20 Board with claims and cause an increase in administrative
21 costs as well as substantial increase in the total of
22 compensation payments. These increases would be
23 occasioned for the insufficient reason of merely
24 satisfying claims of a minor nature. We believe that
25 the waiting period should be truly analagous to an
26 insurance deductible, hence compensation should be payable
27 only in respect of time lost after the waiting period
28 has expired. This would reduce costs without causing
29 undue hardship and remove the inequity referred to above.

30 The determination of when the three-day



1 waiting period falls in has created dissatisfaction in
2 that any part of a day plus two days has been considered
3 by the Workmen's Compensation Board to equal three days.
4 Such addition may have its origin in the de minimus
5 rule followed by the courts, but it does not appear to
6 accord with the ordinary meaning of what constitutes
7 three days. We suggest that the waiting period be
8 referred to as a certain number of hours. No one would
9 quarrel with the de minimus being applied to a part of
10 an hour.

11 I would like to pause there, Mr. Commissioner,
12 and see if you have any questions to ask me on that
13 score.

14 THE COMMISSIONER: I have no question.

15 MR. ESTEY: I don't understand this ---

16 THE COMMISSIONER: I think it might be a
17 little difficult to persuade the Legislature to turn
18 back the hands of the clock as to payment of compensation
19 for three days.

20 MR. O'CONNOR: I appreciate the difficulty
21 there would be.

22 MR. ESTEY: I was going to say that the
23 proposal as I read the Board's brief is to cut the three
24 days right out of the whole compensation.

25 THE COMMISSIONER: And not date it back
26 after three days.

27 MR. ESTEY: I am wondering, Mr. O'Connor,
28 if you might help us with one sentence in your brief
29 which you read. It is near the top of page 4 which says
30 -- no, I imagine it is better to start back further, over



1 on page 3. The second paragraph from the bottom says:

2 "It is our view that a disability should
3 only be compensable when at that point in
4 time of the accident's occurrence the
5 employee was carrying out his employee
6 duties."

7 Now, I take it if you read that literally that might
8 include the shoelace incident. If the man is on the way
9 from his lathe to the toolroom to get a chisel and he
10 stops and ties his shoe and slips a disc it would seem to
11 me that he is carrying out his employee duties, he is
12 on the way to get that chisel.

13 MR. O'CONNOR: Not at the particular point in
14 time.

15 MR. ESTEY: You mean at the particular point
16 in time he has got to be performing work?

17 MR. O'CONNOR: Yes.

18 MR. ESTEY: So to go to the other extreme
19 a night watchman would never have a claim for compensation
20 unless something fell on him during his vigil or he was
21 assaulted or something of that nature and if he sprained
22 his wrist picking up his pen or if he has a heart attack
23 those are clearly out by your definition.

24 MR. O'CONNOR: Well, it depends upon why he is
25 picking up his pen. If he is picking up his pen to write
26 a report, then he is engaged in an employee duty.

27 MR. ESTEY: Well, I am going to come to that.
28 Would you then care to suggest to us what the wording
29 should be for Section 1 (a) (3)? Do you have any
30 particular wording which the Board has evolved from these
discussions and deliberations?



1 MR. O'CONNOR: In our view, the way it
2 is now worded can or does incorporate what we submit.

3 MR. ESTEY: You think that properly and
4 literally applied this would be adequate?

5 MR. O'CONNOR: Yes.

6 MR. ESTEY: The way it is worded now
7 would not, for example, rule out a condition just because
8 it happened to be a particular condition such as a heart
9 attack, that that might not always be excluded from
10 Compensation?

11 MR. O'CONNOR: It would depend how he
12 got the heart attack.

13 MR. ESTEY: How he got it, that is right.
14 Assuming for the moment that one were interested in
15 altering the waiting period, leaving aside your suggestion
16 that we cut it out, you say that the waiting period as
17 now applied by the Board is necessary because of the use
18 of the word "days" and, therefore, we go to hours. Would
19 you have to describe the hours that would count?

20 MR. O'CONNOR: I think it could be
21 24 working hours.

22 MR. ESTEY: If a man is on a swing shift,
23 the waiting period is going to be taken from there,
24 whether it was at the end of his rotation or at the
25 beginning of his rotation?

26 MR. O'CONNOR: Yes.

27 MR. ESTEY: And with some difficulty you
28 accept those because they are the lesser of the difficulties.

29 MR. O'CONNOR: Yes. We don't think the
30 Act is being interpreted in the way that the legislature



1 intended it.

2 MR. ESTEY: Because it says at least
3 three days?

4 MR. O'CONNOR: Yes.

5 MR. ESTEY: Then you were going to go on?

6 MR. O'CONNOR: Yes.

7 Ideally the waiting period should be
8 applicable only to time lost off the job. On the other
9 hand, it is appreciated that to refer to the waiting
10 period as "working days" brings into play the vexing
11 question of what is a working day in a particular case.
12 Perhaps this question could be handled satisfactorily by
13 providing in the Act that the waiting period shall be
14 working days (or hours) and in the regulations that the
15 onus is on the employee to prove that a Saturday or
16 Sunday is a working day and that the onus is on the
17 employer to prove that any other day is not a working day.

18 Accident Reporting:

19 An accident should be reported promptly and
20 whatever can be done to encourage prompt reporting should
21 be done. However, it is not always clear-cut that an
22 accident has happened. An inconsequential bump may be
23 the effective cause of a bone disease that does not
24 become apparent for months. That is why we would oppose
25 a complete bar to a claim not submitted within a certain
26 length of time. We agree with Subsection 5 of Section
27 21 which gives the Workmen's Compensation Board the power
28 to remove the bar on claim for compensation imposed by
29 Subsection 1 of that Section. Our hope, however, is that
30 the staler a claim is the more skepticism there will be



1 with which it is received.

2 Those are our submissions, Mr. Commissioner.

3 MR. ESTEY: I take it on that last point
4 that the Board of Trade's views is that this statute is
5 an employment injury insurance plan and nothing more.

6 MR. O'CONNOR: That is right. It is not
7 a social welfare piece of legislation.

8 MR. ESTEY: Thank you, Mr. O'Connor.

9 The International Railways Brotherhoods.
10 International Union of Mine, Mill and Smelter Workers.

11 THE COMMISSIONER: There is no one
12 appearing for the International Railway Brotherhoods?

13 MR. ESTEY: No. There was no one appeared
14 for them the last time either.

15 SUBMISSION

16 of the

17 INTERNATIONAL UNION OF MINE, MILL & SMELTER WORKERS (CANADA)

18 MR. KENNEDY: Mr. Chairman, again we have
19 not specifically dealt with some of the points which are
20 now under discussion, and the brief we have prepared
21 deals rather briefly with two of the points, the waiting
22 period and casual labour. However, on point one and
23 point four, the reporting of accidents, we did not deal
24 with this to any extent because we felt that the changes
25 that have been made in the Act in respect to accidents
26 arising out of and in the course of employment was a
27 desirable change, was a good change from the previous
28 provisions, therefore we did not suggest that that should
29 be changed. We have considerable to say on the question
30 of accidents; and other sections of our brief deal with



1 industrial disease, pre-existing conditions, and so forth.
2 but I have no intention of dealing with these at the
3 moment because they will be dealt with at the proper time
4 in the Hearing. I will have something to say on the
5 question of reporting of accidents, from the discussion
6 that has already taken place before the Commission. How-
7 ever, our brief does say, with respect to the waiting
8 period:

9 The present provisions of the Act do not
10 provide for benefit payment arising out of personal
11 injury by accident for the first three days of disability.
12 In our view, no workman should suffer earnings loss
13 occasioned by such injury. We therefore recommend the
14 elimination of the three day waiting period.

15 On that particular point, Mr. Commissioner.
16 I should note that a number of other Provinces have
17 reduced the waiting period to one day, and from any
18 information that we have it has caused no great difficulty
19 or any great inundation of correspondence or work which
20 the Board did not previously have. It should be remembered
21 that the workman already, and for some considerable time,
22 is entitled to medical aid from the first moment of
23 accident and that the employer is required to report any
24 accident that takes place, whether it disables for five
25 minutes or five years; and the fact that medical aid
26 has to be paid, the same correspondence has to go between
27 the employer and the Board and the Board and the doctors
28 in the reporting of accidents and in the payment of
29 claims for medical aid. So the reduction of the waiting
30 period would not, in our opinion, create any great



1 difficulty or increase the work load to the extent that
2 may be thought by reducing the waiting period.

3 Presently, workmen whose employment is of
4 a casual nature are excluded from the provisions of Part
5 1. We feel that such exclusion is unjustified and places
6 a heavy financial burden upon a workman so employed, in
7 taking the matter to the courts to obtain redress for loss
8 in earnings occasioned by job injury. We therefore
9 recommend that this exclusion be deleted from the Act.

10 Of course, from the discussion this morn-
11 ing, we realize that this must, of course, be a vexing
12 problem where we have the hypothetical case of a man
13 being injured when he was shovelling snow. How you could
14 bring this under the Compensation Act without making each
15 householder who would engage someone to do this work pay
16 to the Compensation Board, I don't know how you would get
17 around it. But certainly if the casual labour were being
18 done for an employer who otherwise has employees covered
19 by the Act, then I suggest that in all these cases the
20 casual labour should be covered by **compensation.** It
21 might be that there is a very close - I don't know how
22 close that would come, whether at the present time he
23 might be, if it is in the course of the employer's usual
24 business. However, there may be casual labour that would
25 not be determined and a man could be denied by interpre-
26 tation. However, if it is work of a casual nature for
27 an employer who presently has other employees covered by
28 compensation, then this casual work should certainly be
29 covered as well.

30 Going on to the reporting of accidents,



1 Mr. Chairman, I have a few brief comments on this. We
2 have had a great deal of experience of accidents which
3 were not reported during a man's shift or at the end of
4 his shift. In the industry in which we are most inter-
5 ested, the mining industry, I think the intent of the
6 Act, the notices put out by the Board, is that every
7 accident, no matter how slight, should be reported. I
8 think in some of the operations where you have several
9 thousand men employed, that you would have a line-up of
10 almost every man on the job each day because he runs into
11 some scratch or some bump, if you were to carry out the
12 wishes of the Board, which I certainly agree with, the
13 publicity put out, the notices, and certainly this is to
14 be desired. But again we have a man who gets a small
15 scratch or a small bump and he feels that he would be a
16 sissy if he went to report the tiniest scratch and,
17 subsequently, it becomes infected, or something happens
18 where he should have had care or first aid treatment at
19 the beginning, and several days later this may develop.
20 Now, this can almost of necessity create suspicion in
21 the mind of the employer: Did it happen there? But I
22 think **practically** speaking that a man does not make
23 claims for something that happened off the job, and if
24 it does happen, an investigation of the employer and of
25 the Board itself would eliminate any such case.

26 THE COMMISSIONER: It might eliminate
27 some of them.

28 MR. KENNEDY: Well, I don't suppose we
29 will ever have perfection, but, generally speaking,
30 people are honest and will not take the chance of being



1 accused of defrauding an employer or the Compensation
2 Board. I think one of the most vexing problems that
3 perhaps faces the Board today and all concerned is the
4 question of back injuries and injuries of some joints.
5 Now, I know from experience that if a man is working
6 underground and it is heavy and hazardous labour, if he
7 twists his back I think almost without exception the man
8 figures that the easiest way to overcome that is to work
9 as hard as he can, get a good sweat, sweat it out of
10 himself, and he goes off shift and he has a good hot
11 shower and he feels all right and he doesn't want to
12 report something that would make him feel a sissy. Now,
13 the next morning he doesn't feel too good and he cannot
14 get out of bed. I think these are some causes of accidents
15 that are not reported immediately. I have something to
16 say on the question of back injury, but I think we will
17 hold that for the other part of the agenda, Mr. Chairman.
18 But I think these are some reasons why accidents are not
19 reported right on the spot. Certainly in heavy industry,
20 under the provisions of the Act, employers who post
21 notices with regard to injuries, I think they would have
22 as big a first aid crew as they would have production
23 workers.

24 MR. ESTEY: Mr. Kennedy, my recollection
25 is that the statutes of British Columbia, Saskatchewan
26 and Manitoba have a shorter waiting period of one day.
27 Have you any comments on that?

28 MR. KENNEDY: I think Newfoundland and
29 Prince Edward Island also have a shorter waiting period.

30 MR. ESTEY: Have you any statistics which



1 would indicate the increased percentage of accidents that
2 would come under the Act if the waiting period were
3 reduced from three to two or one?

4 MR. KENNEDY: No, I have no statistics.
5 My only submission on that is that there is correspondence
6 right from the first time in any case, medical payments,
7 and so forth.

8 THE COMMISSIONER: You are thinking in
9 terms of the administrative cost and there would be the
10 wages that couldn't be claimed because it was not within
11 three days.

12 MR. KENNEDY: That is right.

13 THE COMMISSIONER: But as far as the
14 administrative costs at least were concerned, it would not
15 increase the costs?

16 MR. KENNEDY: Not greatly, Mr. Commissioner.

17 MR. ESTEY: The waiting period was first
18 in the Act in all these types of legislation because it
19 formed some type of deterrent, I suppose. Do you have
20 any views as to what other deterrent there might be to
21 a workman making a claim for compensation which was
22 marginable, where he got bumped yesterday and he says
23 the next day, "I might as well stay at home"?

24 MR. KENNEDY: I think all the deterrent
25 that is necessary is there now. The man cannot get
26 compensation unless the employer's report corresponds
27 with the report that he makes; and the medical report
28 must give the reason for his entitlement to compensation.
29 So all the deterrent is there now.

30 MR. ESTEY: There is good investigation.



1 MR. KENNEDY: Yes.

2 MR. ESTEY: The Act now requires that the
3 employer report accidents which give rise to either
4 compensation or to medical aid and nothing in between.
5 This is one of the problems you point out where an event
6 occurs, you might call it an accident, he gets a piece
7 of something in his eye, he is underground, and two or
8 three days later this reacts, perhaps he is sensitive to
9 something in the rock. That kind of thing cannot be
10 reported at the time, the employer doesn't know about it
11 and the employee is not sure about it. This kind of
12 accident is reported and it develops and is treated. I
13 take it your point is that the administration of this
14 Act, starting as it does from the occurrence of the event
15 which gives rise to compensation, has to be elastic.

16 MR. KENNEDY: That would be my opinion.
17 Another example, Mr. Estey, is a man working in a mine,
18 for example, and getting a little piece of wire off a
19 cable or a little piece of dirt which jags his finger and
20 he pulls it out and does nothing about it, but some
21 foreign body has got in there and a few days later it is
22 infected and he has to go to a doctor for that. There
23 are many instances of small injuries where a man would
24 think he was a sissy to go to a doctor, which I think
25 is wrong, but it is human nature.

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1 MR. ESTEY: Well my question of the deterr-
2 ent was based on the recognition of some of the features
3 of human nature also, and this is a problem and you say
4 the investigative procedure should counter-balance. That
5 is what I wanted to hear.

6 On this question of casual labour, your
7 suggestion in effect is that if a man has a payroll,
8 whether the payroll is here today but not tomorrow does
9 not make any difference so long as he does work while
10 he is here for which he is paid and if that payroll is
11 covered by the Act then the man is covered by the Act.

12 MR. KENNEDY: That would be my opinion. I
13 can't see each householder having to contribute.

14 MR. ESTEY: I don't intend to refer to that
15 as a householder but a company hires somebody and he
16 might put it into petty cash instead of the payroll.
17 For instance, a company has a lawn which grows pretty
18 well once in a year, the spring and after that is walked
19 to death so they hire someone to cut a lawn, that would
20 not go on the payroll normally?

21 MR. KENNEDY: No.

22 MR. ESTEY: It would go out of petty cash
23 but the man would be doing work in connection with his
24 trade and this is what I base my question upon. Your
25 answer is simply that if the employer is covered by the
26 Act, whatever kind of service he engages in the way of ^{labour} the
27 workmen should be covered?

28 MR. KENNEDY: Yes.

29 MR. ESTEY: Thank you, Mr. Kennedy.

30 International Nickel Company.



1 THE COMMISSIONER: Perhaps, Mr. Estey, we
2 will adjourn for ten minutes.

3 ---Short Recess.

4
5 MR. OSLER: Mr. Commissioner, I have Mr.
6 Goodwin with me and I have Dr. Hazelwood, the Chief
7 Surgeon and doctor of the company.

8 Sir, in the section we are dealing with now,
9 I intend to deal only with the matter of the accidents,
10 waiting period and reporting of accidents. In this
11 connection, sir, I think that I would like to read from
12 the company's brief in order to, I think, establish a
13 background in the light of which we should be consider-
14 ing these particular matters. I refer to page 2 of the
15 brief, the short paragraph in the middle of page 2 that
16 says.

17 The objects of the original legislation
18 are quite clear if reference is made to the interim and
19 final report of the late The Honourable Sir William
20 Meredith in the years 1912 and 1913.

21 These reports were made after most careful
22 and exhaustive enquiry. They found in effect that the
23 law of Ontario, as it then existed, was entirely in-
24 adequate to meet the conditions under which industries
25 were then carried on or to provide just compensation
26 for those employed in them who met with injuries or
27 suffered from occupational diseases contracted in the
28 course of their employment. The objects were,
29 therefore, twofold: (1) to modify the law as it then
30 existed so that it would be adequate to meet the con-



1 ditions under which industry was being carried on, and
2 (2) to provide just compensation for those employed in
3 industry who met with injuries or suffered from occupa-
4 tional diseases contracted in the course of their
5 employment.

6 As the law then stood, an employee who met
7 with such injuries or suffered from occupational diseases
8 could only recover compensation after proving negligence
9 on the part of his employer. Even should he prove such
10 negligence, he still could not recover if he had been
11 guilty of contributory negligence or if "the assumption
12 of risk rule" or the "doctrine of common employment"
13 were successfully invoked against him. Even though
14 such an employee were successful in recovering judgment
15 for such compensation, the employer might be unable to
16 pay the sum awarded. This whole situation was felt to
17 be inequitable to the employee.

18 The employer on the other hand was running
19 an ever-increasing risk, particularly if a small
20 employer, of being ruined financially by having to pay
21 compensation in the form of damages for the death or
22 permanent disablement of an employee. The procedure
23 for determining his liability was slow and expensive
24 and in many cases the compensation finally determined
25 to be payable to the employee was but a small fraction
26 of the cost to the employers. In these circumstances
27 it was felt that some form of insurance was necessary
28 from the employer's point of view.

29 The recommendations of the Commissioner
30 included, in effect:



(1) That the contribution which the employee would make to the scheme would be,

(a) the loss of all his wages for seven days if his disability did not last longer than that,

(b) his outlay for medical or surgical treatment, nursing and other necessities,

(c) the loss of 45% of his wages while his disability lasted, and

(d) the surrender of his right to damages under the common law or under the Workmen's Compensation for Injuries Act.

(2) That the contribution which the employer would make to the scheme would be,

(a) an amount equal to 55% of the employee's earnings up to \$2,000 per year of the life of the employee in the case of total permanent disability, and a proportionately lesser amount for partial permanent disability, and where the disability was not permanent an amount equal to 55% of the employee's earnings up to \$2,000 per year for the duration of the disability in the case of total temporary disability and a proportionately lesser amount for partial temporary disability;

(b) that should the accident result in



1 the death of the employee, the
2 employer would pay an amount sufficient
3 to provide burial expenses up to a
4 maximum of \$75 and monthly payments
5 to the employee's dependents not
6 exceeding \$40 per month;

7 (c) that the employer would pay such com-
8 pensation in cases involving the death
9 or serious injury of the employee even
10 though the injury was attributable
11 solely to the serious and wilful mis-
12 conduct of the employee; and

13 (d) that the employer would pay such com-
14 pensation even though the employee's
15 right to recover damages would have
16 been barred by "the assumption of
17 risk rule", "the doctrine of common
18 employment" or by contributory
19 negligence on the part of the
20 employee.

21 (3) That in the industries mentioned in
22 Schedule 1 the employer, particularly the
23 small employer, would be protected from
24 the impact of having to meet, as an
25 individual, the cost of compensation for
26 the death or permanent disablement of an
27 employee, by a scheme of mutual insurance
28 whereby such cost would be charged to all
29 employers in the class in which the injured
30 employee was employed.



1 (4) That in the interest of security of pay-
2 ment of periodic compensation to the
3 injured employee and so that employers in
4 any class should not be unduly or unfairly
5 burdened in future years with payments
6 which were to be made in those years in
7 respect of accidents which had previously
8 happened, an annual assessment would be
9 made in each class of industry mentioned
10 in Schedule 1 to meet all compensation
11 payable in the current year in that class
12 and all compensation payable in future
13 years in respect of accidents happening
14 in that year in that class.

15 Let me pause for a minute, sir. I have
16 read that very quickly but, in summary, we are really
17 looking at a situation which is strictly a matter of
18 you had to have a situation where there was negligence.
19 The Act and these recommendations which were embodied
20 in the Act then removed this. Whether an injury should
21 occur because of a negligent act, he was still covered
22 unless it was willful as described, except, of course,
23 there in the deaths, serious and willful misconduct.

24 These recommendations, of course, were
25 embodied in the legislation in 1914. I am reading
26 again, sir, towards the bottom of page 5.

27 It is also clear that the fundamental
28 principle of the legislation was personal injury
29 through accident which included certain occupational
30 diseases directly related to employment. The Act was



1 not to be of a purely social nature compensating work-
2 men who for any reason and at any time might be in-
3 capacitated and unable to work. There had to be a
4 direct relation to the employment, not just the fact
5 that the workman was employed. This principle was
6 clearly pointed out by Mr. Justice Middleton in his
7 report when he stated:

8 "The Workmen's Compensation Act must not
9 be permitted to become health insurance
10 or a system of old age pensions".

11 Mr. Justice Roach in his report also affirmed this
12 principle when he stated:

13 "This Act should be considered for what it
14 is and was originally intended to be
15 namely a scheme by which compensation is
16 provided in respect of injuries to workers
17 in industry. It is not a system for dis-
18 pensing charity. It is not unemployment
19 insurance. It is not social legislation
20 for the purpose of elevating the standard
21 of one group in society at the expense of
22 another."

23 I might, in that respect, sir, draw your
24 attention, as I am sure you undoubtedly read before,
25 to the remarks of Mr. Justice Roach, but I would like
26 to just draw your attention particularly to a further
27 statement of his on page 12. It is next to the last
28 paragraph, where he states:

29 "If the true purposes and objectives of
30 the Act are adhered to, justice will be



1 done as between industry and labour. If,
2 on the other hand, those purposes are lost
3 sight of, or this Act from time to time
4 be regarded as a convenient place into
5 which to put legislation which in substance
6 is social and not compensatory, it may
7 become very much distorted. In the result,
8 labour will continue to be relieved from
9 unjust burdens from which it suffered too
10 long under the common law but an injustice
11 will be done to industry by placing on
12 its shoulders burdens which should be
13 borne by society generally."

14 Sir, with that picture before us, let us
15 deal with the problems that we are discussing this
16 morning. I would like to deal with the Waiting Period
17 first, and there I would refer to page 13 of our brief
18 and perhaps I should read it. This is at the bottom
19 of page 13.

20 The waiting period was one of the original
21 contributions which employees were to make to the scheme
22 of the Act. Their other contributions have been
23 materially reduced while the contributions of employers
24 have materially increased.

25 Now, in that connection, sir, I think it
26 is quite clear that there were to be contributions by
27 both parties, you might say, and in course of time
28 the percentage, 55 has increased to 75, medical
29 expenses have been included, etcetera, in the various
30 amendments since 1914.



1 Going back to the brief:

2 This Company believes that the three-day
3 period for which a disability must persist before com-
4 pensation is payable should not be reduced and that the
5 reference in section 3(1)(a) of the Act should be to
6 "working" days, not "calendar" days. The present
7 reference to calendar days is completely unrealistic
8 in view of the shorter work week and the many work
9 schedules which provide for more than two consecutive
10 days off.

11 Under present conditions the employee's
12 contribution under the waiting period has been drastic-
13 ally reduced with, it is suggested, a proportionately
14 greater increase in the contribution by employers. In
15 addition an element of inequity exists between individ-
16 ual employees having regard to the different time that
17 an accident may take place in relation to the normal
18 days off from work.

19 It is of interest in connection with the
20 matter of the waiting period to consider the report
21 of The Honourable Mr. Justice Tysoe of the Court of
22 Appeal of British Columbia upon The Workmen's Compensa-
23 tion Act of that Province in 1965 where, in connection
24 with a request that the waiting period should be
25 eliminated, he states at page 199 of his report:

26 "In my opinion it must be clearly shown
27 that its existence works an injustice on
28 workmen, and that its exclusion will not
29 work an injustice on industry. That has
30 not been demonstrated to me."



1 In connection with that quote, sir, I
2 quite realize that the waiting period in B.C. is not
3 the same as in Ontario.

4 THE COMMISSIONER: What is it, one day?

5 MR. OSLER: I think it is one day, My
6 Lord.

7 Now, the complaint, as I understand it
8 from the point of view of labour, is if a workman is
9 injured - and let us set aside any question of whether
10 it is in the course of his employment or arising out of
11 his employment - if he is injured and there is an
12 accident as such, he should be entitled automatically
13 as such, to compensation from the very beginning. I
14 suggest to you, sir, that the basis of that argument
15 first of all, when the argument is put forward is
16 always where he is injured through no fault of his own.
17 Now this, with respect, sir, is completely not to the
18 point. The point is that there is under this compensa-
19 tion legislation no requirement to prove negligence.
20 That requirement was taken out when this Act was brought
21 into effect, and one of the reasons for a waiting
22 period was the contribution to be made by the employee
23 when he had the advantage of not having to demonstrate
24 any question of negligence. Then, one of his con-
25 tributions was that there would be a waiting period.

26 THE COMMISSIONER: One of his contributions
27 was that if the accident was minimum he was not entitled
28 to compensation?

29 MR. OSLER: That is correct, sir.

30 Now, insofar as calendar days and working



1 days are concerned, I think it is clear that there are
2 many schedules, certainly in the mining industry, where
3 you may have a man injured on a Friday afternoon who
4 may not, in fact, be scheduled to report for work until
5 Tuesday. That, compared with a man who is working and
6 was injured on Monday who has worked Tuesday, Wednesday
7 as working days, can result in complete inequities in
8 this application of calendar days.

9 I have noted the proposition put forward
10 that this should be in a matter of hours. I suspect
11 and I suggest that while it is not insuperable, I
12 expect that you would get a great deal of difficulty
13 in attempting to apply hours starting from when, start-
14 ing from the time the accident is reported. It is a
15 very difficult time to find out what hour you are talk-
16 ing about - sometime during the shift the man was hurt.
17 I do think, of course, that the Act does state clearly,
18 "At least three days". That, I think, is a matter of
19 interpretation. It has now been interpreted as two
20 days-plus. It is now being interpreted as two days-plus.

21 In addition, in the matter of reduction
22 in the waiting period, I think it must be recognized
23 with short-term injuries when the Board are faced with
24 dealing with them, they are dealing with a probably
25 relatively small amount of compensation and I think
26 naturally the time spent in determining whether they
27 were proper or not or spent in investigation can only
28 be less intensive than in connection with accidents or
29 injuries which are of a longer duration or which have
30 a greater impact.



1 I am not suggesting that the Board - I am
2 not casting aspersions on the Board that they merely
3 run them through without investigation, but I think
4 just from the very fact of them being small, being
5 minimal, and the volume which I think, no doubt, would
6 increase, they cannot help but deal with them less
7 intensively than they would with other forms of
8 accidents. I thus feel that any question of a com-
9 parison, for instance, which might be made or might be
10 demonstrated I think probably by an investigation of
11 the Board's reports over the year that when waiting
12 periods have been reduced there has been no increase in
13 the administrative cost, I don't think is really
14 a proper test. I think it might be of interest to see
15 the increase in payments made on claims by reason of
16 the reduction in the waiting period. That might have,
17 perhaps, more bearing, but the question of what it would
18 cost I don't think arises.

19 I don't know at this point, sir, I - I
20 don't really want to deal with anything further on the
21 matter of waiting period. I don't know whether Mr. Estey
22 or yourself have questions on this before I proceed.

23 MR. ESTEY: It might be more convenient
24 if you dealt with everything.

25 MR. OSLER: Very well. To some extent,
26 the matter of accident reports or reporting of
27 accidents and the definition of "Accident" are linked
28 particularly when we deal with that difficult area of
29 back cases. I would like to read, to start with, from
30 page 17 of the Company's brief, which is dealing with



1 Accident Reports.

2 Section 115 places severe obligations on
3 the employer with respect to reporting accidents. To
4 this the Company takes no exception and it agrees that
5 the Act should not provide as rigid obligations with
6 respect to the reporting of an accident by the workman.
7 The Company does consider, however, that the latitude
8 afforded to the employee under sections 21(1) and 21(5)
9 is too broad.

10 Where the definition of "accident" as
11 contained in section 1(1)(a)(iii) is strictly applied
12 to the wording of section 21(1) it becomes apparent
13 that notice in the case of disablement arising out of
14 and in course of employment is only required to be
15 given upon the disablement. In case of disablement,
16 particularly back disabilities, the whole basis for a
17 claim depends upon an event or occurrence which may
18 well be of a minor nature, unreported and unknown to
19 the employer and which happened some time prior to
20 the disablement. In all cases depending upon such
21 prior unknown events employers encounter insurmountable
22 difficulties in their efforts to obtain or provide
23 specific, accurate and reliable information and are
24 severely prejudiced.

25 It is submitted by the Company that in
26 cases of disablement notice must relate to the
27 occurrence of the event from which it is alleged the
28 disablement arose and that the latitude provided by
29 section 21 should be restricted only to excuse failure
30 in giving notice where physical incapacity to do so



1 exists and in the case of error or omission where
2 there can be no doubt as to the knowledge of the
3 employer of the accident or event at the time of its
4 occurrence.

5 Where the scale of compensation is such
6 that there is little or no financial disadvantage in
7 being in receipt of compensation the opportunity for
8 abuse is far too great.

9 In addition this Company submits that in
10 subsection (5) of section 21 the question of whether
11 or not an employer is prejudiced should be a question
12 of fact rather than a matter of opinion of the Board.
13 Also in the case of compensation payable out of the
14 accident fund the claim should only be allowed if
15 neither the Board nor the employer are prejudiced
16 and the Board is of the opinion that such special
17 circumstances existed that the interests of justice
18 require that the claim be allowed. It should be noted
19 in this connection that the latter suggestion is sub-
20 stantially that recommended by Mr. Justice Tysoe in
21 his report dealing with section 49 of The Workmen's
22 Compensation Act of British Columbia.

23 I might say, sir, that was dealt with
24 by Mr. Justice Tysoe at page 424 and 425 of his
25 Report.

26 THE COMMISSIONER: That was what I was
27 thinking about the other day.

28 MR. OSLER: That appears on pages 424 and
29 425, sir.

30 THE COMMISSIONER: Well, I will have a



1 chance to look at it later.

2 MR. OSLER: As we have tried to suggest
3 here, sir, this very difficult area - and there is
4 no doubt it is a very difficult area - of a man failing
5 to report an accident to the company at the time of
6 its occurrence, subsequently becoming disabled from
7 some cause or another and then being faced - and
8 believe it or not, human nature is such that it can be
9 faced with a choice of saying "Yes, I hurt it while
10 I was away from work on which I have no coverage" or
11 "I hurt it while I was at work and if I can get it
12 I have coverage". There is a great deal at stake as
13 to where this occurred. I could suggest that there
14 could be an incident occur at work unreported, and an
15 incident occur away from work at some later time
16 which is unknown to the employer, but if the old
17 original incident can be recalled or be resurrected,
18 you might say, "Well, I thought it was so minor I
19 didn't bother", or some sort of an excuse to be able
20 to try and obtain some form of compensation.
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1 THE COMMISSIONER: What about the man
2 that Mr. Kennedy talks about, who scratches his finger
3 and he thinks it is not important and four or five days
4 later it becomes infected?

5 MR. OSLER: Surely, sir, the employee, in
6 a situation like that, if he wants to maintain his rights
7 under the Act, he is bound to take the necessary action.

8 THE COMMISSIONER: Well, Mr. Kennedy said
9 if you did that you would have a line-up a mile long at
10 International Nickel.

11 MR. OSLER: That I don't know. I do
12 know from Dr. Hazelwood, insofar as that company is
13 concerned, that there is first aid on each of the opera-
14 tions, and in the normal course a man having a cut or
15 injury like that has it treated at first aid, either at
16 the time of injury or not, or have it looked at as he is
17 going off shift. I think we can paint pretty dreadful
18 pictures of a line-up of men.

19 THE COMMISSIONER: All of us have
20 experienced probably running a nail into our fingers and
21 perhaps we should go and have a tetanus shot, but some of
22 us don't.

23 MR. OSLER: That is true, sir. But there
24 are people who can sustain minor cuts and that type of
25 thing and it would have no relation. I think if anyone
26 wants to exercise his rights under the Act, surely his
27 rights are clearly there to protect himself.

28 THE COMMISSIONER: That is the problem.

29 MR. OSLER: The type of thing that you
30 can come across, we have a number of cases here and I



1 don't want to go through them, but take the man who
2 reportedly was climbing down a ladder and he slipped off
3 the rung and hurt his back. The accident supposedly
4 happened on the 23rd of June; the date it was reported
5 was the 18th of August. Now, this is not a cut on the
6 finger.

7 THE COMMISSIONER: Was compensation
8 allowed in that case?

9 MR. OSLER: Compensation was allowed, for
10 some period.

11 MR. ESTEY: No medical treatment at the
12 time?

13 MR. OSLER: No, no medical treatment at
14 the time. It was not reported. I understand the first
15 report in this case occurred when The Workmen's Compensa-
16 tion Board sent out a form asking for a report of the
17 accident.

18 THE COMMISSIONER: I suppose a fellow
19 workman said he saw him fall off the ladder?

20 MR. OSLER: Yes. In this case a man said,
21 "I saw a man limping and I asked him what was wrong and
22 he said he slipped off a ladder."

23 THE COMMISSIONER: Would you like to file
24 those documents you have?

25 MR. OSLER: Well, I really have them
26 here, sir, to indicate the type of thing that can come
27 up. It is impossible for the employer to go back to
28 June, from August, to find out about a thing like that.
29 We have a number of them here. These are not just over
30 the weekend, these are over a matter of months, and if



1 the thing was as severe as this one was, and obviously
2 this one was at the time, it was not a question of having
3 just a little piece of wire in his finger --

4 THE COMMISSIONER: You have half a dozen
5 there. Have they all similar time lags?

6 MR. OSLER: A time lag of from the 14th
7 of July to the 18th of September; September 22nd to
8 October 16th, not as long. Well, here is one where he
9 said it happened somewhere in the week of the 12th of
10 July. We finally got the report on the 21st of July and
11 he claimed it happened some time in the week of July 12th.

12 THE COMMISSIONER: What happened to him?

13 MR. OSLER: He received compensation.

14 MR. ESTEY: Is that a back case?

15 MR. OSLER: Yes, these are backs.

16 THE COMMISSIONER: Are all these cases
17 back injuries?

18 MR. OSLER: Yes, these are back cases.
19 September 10th to October 13th is another one. These
20 are some of the examples. This particular facet of back
21 cases is the most vexing question.

22 THE COMMISSIONER: Mr. Kennedy has talked
23 about people in the mine who have wrenched their back in
24 having to make some movement in the pit.

25 MR. OSLER: I am not quarrelling with
26 Mr. Kennedy's statement, but this one, climbing down
27 the ladder and he slipped off the rung --

28 THE COMMISSIONER: What is the next one?

29 MR. OSLER: "He was lifting a ramp and
30 his feet slipped, causing injury to his back." "While



1 nipping in the stoep his back became sore gradually."
2 "Some day last week while drilling and trying to hold on
3 to the machine he felt a pain in his back which lasted
4 for about an hour." "While moving blasting agent on
5 wheelbarrow his back became sore doing this job." This
6 is a month later. This is where I find it very difficult
7 to comprehend how a memory can be so exact to relate a
8 particular disability to an occurrence which happened
9 months before, to a date, an hour, a time, to know exactly
10 who you are working with, know exactly who the witness
11 was. This type of thing, sir, I believe, is stretching
12 things --

13 THE COMMISSIONER: Sometimes you can do
14 that.

15 MR. OSLER: Yes, sometimes you can.

16 THE COMMISSIONER: I remember Mr. Fairley
17 telling me of the time when the course of the Humber ran
18 by a mill and there was an old man said he could remember
19 away back thirty years before in 1865. He said it was
20 a lovely spring day and the water was running clear and
21 cold right beneath his feet, and he sat on the bank at
22 the old mill. Mr. Bain said, "You have a remarkable
23 memory. You can remember it was the year 1865 you saw
24 this," and the old man said, "Oh, yes." "And you can
25 remember it was the month of April?" And the old man
26 said, "Yes, indeed I can." Mr. Bain said, "You wouldn't
27 know the date of the month, would you?" And he said,
28 "Oh, yes, Mr. Bain, it was the 10th of April." - I have
29 forgotten what the date was. At that, Mr. Bain discon-
30 tinued his cross-examination and turned to the Judge and



1 said that this estimable, old gentleman's evidence should
2 be treated in the same light and not be accepted. Then
3 the old gentleman spoke up and said, "Well, Mr. Bain, you
4 didn't ask me, but if you had, I would have told you why
5 I remembered." He said, "It was the day after Abraham
6 Lincoln was shot."

7 MR. OSLER: Yes, if it is related to some
8 other event. But I suggest in this type of thing, while
9 there may be the odd case where you have sufficient
10 memory, this is stretching things too far.

11 Perhaps I should deal with our comment on
12 sub-section (5) of section 21. You will notice the
13 present working of the section provides, "if in the
14 opinion of the Board". I admit the Board is the
15 final arbitrator, so perhaps it is subject to comment
16 from that point of view. But I do suggest that if you
17 have a provision which talks about "in the opinion of
18 the Board," then it is a matter of opinion, not a matter
19 of fact. It appears in the middle of the third line, that
20 that should be a matter of fact rather than just opinion.
21 And, of course, the balance of that section, I suggest,
22 should be amended to provide that neither the Board nor
23 the employer is prejudiced.

24 MR. ESTEY: What amendment do you suggest?

25 MR. OSLER: Well, it is a long the line
26 of the amendment Mr. Justice Tysoe suggested. He took
27 out the final section. Their section is not quite
28 identical to ours.

29 MR. ESTEY: That the section should say,
30 "that the Board is of the opinion", page 425?



1 MR. OSLER: That is true enough. He is
2 suggesting that in the British Columbia Act originally
3 "the Board is of the opinion that the claim is a just one
4 and ought to be allowed", should be substituted by "that
5 neither the Board nor the employer have been prejudiced".
6 The opinion refers to the special circumstances, not to
7 the matter of prejudice. Of course, in our present Act
8 the matter of prejudice to the employer does not apply
9 to Part 1.

10 MR. ESTEY: What is that last comment?

11 MR. OSLER: I am sorry, the opinion of
12 the Board only applies when it is payable out of the
13 Accident Fund. What I am really suggesting, Mr.
14 Commissioner, is the substitution of wording in that
15 sub-section (c) of the British Columbia Act, to coming
16 after the word "compensation" on the third line.

17 MR. ESTEY: Are you going to leave those
18 claim samples with us?

19 MR. OSLER: Well, can I possibly give you
20 a note? The records we have here will be the exact
21 records the Board has. There are some internal notes.

22 THE COMMISSIONER: Well, it is sufficient
23 perhaps, Mr. Osler, if you will give us the claim numbers
24 or leave them with counsel at the end of the Hearing.

25 MR. OSLER: These are whole files and I
26 am not sure whether inter-company notes should be there.

27 I would like now to proceed to the matter
28 of definition of "accident". I must admit that in the
29 first instance this is a very difficult area. This
30 appears on page 22 of the company's brief.



1 During the period between 1951 and 1965
2 the physical effort required on a large proportion of
3 jobs has substantially lessened due to technological
4 improvements. However, rather than showing a decrease,
5 the number of "back case" claims has increased to an
6 alarming degree particularly in the latter years of the
7 period. During the year 1951 this Company had 43 approved
8 claims relating to the back when it had an average working
9 force of 14,795 men. To date for the year 1965 this
10 Company has had 556 approved claims when the average
11 working force was 16,438 men.

12 For the year 1951 \$9,488 was paid out for
13 the 43 approved claims. To date \$170,231 has been paid
14 out for the 556 approved claims and this amount will
15 undoubtedly increase as the still pending claims for
16 that year are settled.

17 THE COMMISSIONER: It might have been of
18 more help if you had given us a comparison of the years
19 1962 and 1965, perhaps.

20 MR. OSLER: That is true, sir. This is
21 one of the problems we have had difficulty with, I am
22 afraid, in preparing some of this material. With our
23 time lag, it is a great difficulty in preparing these
24 statistics, and certainly we had to take the statistical
25 information we had for other purposes and apply them.
26 I agree with you. I have a brief note insofar as 1962.
27 In 1962 I think there were 177 claims approved. This
28 information has been supplied to me since. The other
29 information I have is the percentage of claims approved
30 has dropped from 23 per cent, I think it was, in 1960 to



1 a percentage of claims disallowed of 17 per cent in 1962
2 and 7 per cent in 1965.

3 THE COMMISSIONER: And this refers only
4 to back injuries?

5 MR. OSLER: Only to back injuries.
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1 Mind you, we have pointed out in our brief
2 that '65 is not yet all claims filed in '65. They have
3 not yet all been completely dealt with.

4 THE COMMISSIONER: It is incomplete?

5 MR. OSLER: Yes. In 1961, it would appear
6 that this is information from the Workmen's Compensation
7 Board Annual Report - this is a comparison to the Work-
8 men's Compensation Board Report of 1961. It appears
9 there were a total of 227 claims made insofar as back
10 claims are concerned for International Nickel Company
11 in that year.

12 MR. ESTEY: That is 1961?

13 MR. OSLER: Yes, 227 claims made.

14 MR. ESTEY: That is total claims?

15 MR. OSLER: Total claims.

16 MR. ESTEY: Of which 227 --

17 MR. OSLER: No, in 1962, there were 177
18 allowed. I apologize, Mr. Commissioner, this informa-
19 tion is just beginning to trickle through.

20 THE COMMISSIONER: You were giving us
21 something about 1961.

22 MR. OSLER: In 1961, there were 227. These
23 were sprains, strains, twisting and reaching - all back
24 injuries.

25 THE COMMISSIONER: That doesn't say how many
26 were allowed?

27 MR. OSLER: I can't give you that detail,
28 sir. At the moment. I can try and get some of this
29 information.

30 The increase of this type of case from the



costs must be viewed with the greatest concern.

It must be noted that a back disability can and often does occur in the course of performing the simplest physical movement, such as sitting down, standing up or bending over, and without the presence of any prior injury. In the absence of any sickness and non-occupational accident insurance a back disability which is related to a sprain or strain suffered away from work results in no compensation, while if it can be related to one suffered at work, compensation will probably be received.

Disabilities of the back which result from a specific occurrence at work, such as a blow or severe fall, properly fall within the scheme and intent of the Act and industry does not hesitate to accept full responsibility for such injuries. However, disabilities of the back which stem from obscure and ill-defined origins, such as sprains or strains, which are unnoticed or ignored at the time of occurrence but recalled later or whose occurrence cannot in truth be distinguished from others which are experienced from time to time by most people in any form of activity, do not it is submitted fall properly within the scheme of the Act.

While it has been accepted that an individual's physical peculiarity or sensitivity does not prevent receipt of compensation because he is injured by a condition existing at work which is harmless to others, such as is illustrated in the case of *Dotzaner v. Strand Palace Hotel Ltd.* (1910) 3



1 Burroughs Workmen's Compensation Cases, page 387, it
2 is submitted that back disabilities said to arise from
3 more or less indeterminable origin do not come within
4 that principle. Whereas generally in that type of
5 case the injury can be determined beyond any doubt to
6 be caused by a particular event or circumstance at
7 the place of work, in a great many back disability
8 cases there can be no such determination. Further it
9 must also be noted that there may be no physical
10 peculiarity of the employee in the case of back dis-
11 ability and even should there be some latent defect,
12 malformation or degeneration of the back, the onset
13 of disability does not necessarily arise from the work
14 or any event occurring at or condition of work. A
15 back disability can "come on" in such cases at any
16 time with or without particular activity, much as is
17 the case in all manner of disease. In fact there is a
18 similarity between this type of back disability and
19 disease. In both cases, neither the employment nor
20 the work (excluding of course industrial diseases as
21 set forth in Schedule 3 to the Act) can properly be
22 said to have any true bearing on the onset of the dis-
23 ability.

24 THE COMMISSIONER: Is there any difference
25 in the situation with regard to miners than those of
26 others, I mean people working in the stopes or similar
27 situations?

28 MR. OSLER: You mean the incidence of
29 back cases as compared with other industries?

30 THE COMMISSIONER: Is there something



1 about their work that maybe precipitates trouble, the
2 use of these drills or anything of that kind?

3 MR. OSLER: There is no doubt about it,
4 it is a heavy industry. It is heavy work, there is
5 no doubt about that and, to that extent, I presume
6 that that type of work could have a greater tendency
7 to activate a latent condition I suppose, the fact
8 that it is heavier, but, mind you, I think there is
9 a grave danger in this area, sir, and I am talking now
10 personally and not from the point of view of the
11 Company, that you are almost faced from the point of
12 view of a heavy industry company with requiring a pre-
13 employment medical examination and if any person shows
14 up there with any kind of malformation in his back or
15 any kind of thing which is not absolutely normal,
16 they just don't hire him.

17 THE COMMISSIONER: That is the danger
18 with allowing all these claims?

19 MR. OSLER: That is right, sir.

20 THE COMMISSIONER: Lawyers might seek to
21 refuse to employ anybody with a partial disability?

22 MR. OSLER: They are going to have to
23 do that. I think Dr. Hazelwood would probably agree
24 with me that particularly where the medical people
25 feel that there is a potential problem in a man's
26 back which, in an industry such as mining, might come
27 on, or it might be made worse or might aggravate the
28 condition, I think in that case the employer, having
29 regard to this type of thing, is going to be forced
30 to take the position of just not employing people



1 who have that possible type of defect.

2 THE COMMISSIONER: In your industry now,
3 are there pre-employment examinations?

4 MR. OSLER: There is a pre-employment
5 examination, of course, for everybody.

6 THE COMMISSIONER: But I suppose then
7 there are no others? Are there any intervening ones
8 in the next ten years?

9 MR. OSLER: Not necessarily.

10 DR. HAZELWOOD: There is an annual for
11 the mining certificate under the Compensation Act.

12 THE COMMISSIONER: An annual lung
13 examination?

14 DR. HAZELWOOD: Yes, but at that time
15 the doctor who does the examination does a complete
16 physical examination.

17 THE COMMISSIONER: There is a complete
18 physical at that time?

19 DR. HAZELWOOD: That is right.

20 MR. OSLER: But this would not include
21 X-rays directed specifically at the man's spine to
22 see if there is anything abnormal.

23 DR. HAZELWOOD: It is usually mainly of
24 the chest.

25 MR. OSLER: I think the experience has
26 been, sir, that you can pick up some back conditions,
27 shall I say, not a disability, the man may have free
28 movment. The man, in fact, may at that time not be
29 suffering any pain. You may pick up an indication
30 of a condition which you may prefer to X-ray from the



1 point of view of determining if there is the condition
2 there or not, but there are some conditions which
3 would not be picked up, as I understand it, in an
4 ordinary physical examination, looking at a man stand-
5 ing before you and which would be picked up in X-ray
6 but probably the next step would be to X-ray each
7 prospective employee from the point of view of his
8 back and any condition would wipe him out as far as
9 seeking employment is concerned.

10 But this type of increase in back cases
11 is really quite alarming. Continuing with my brief.

12 The enlargement of the definition of
13 "accident" by the amending Act of 1963 has resulted in
14 the application of compensation to cases of disable-
15 ment arising from causes which hardly can be said to
16 have direct connection with work or employment. The
17 legislation thus becomes social in nature and con-
18 stitutes a serious departure from that basic principle
19 of compensation for injury from hazards incident to
20 the nature of the work. It casts upon industry alone
21 a burden which should be more properly borne by society
22 as a whole and the degree of this burden is amply
23 illustrated by the alarming increase in the sums paid
24 out for disabilities relating to the back as indicated
25 above.

26 This Company accordingly submits most
27 forcibly that provision should be made in the Act to
28 show clearly that in order to receive an award for
29 back disability suffered by a workman, there must be
30 a direct causal relationship to an event occurring at



1 work of a sufficient degree of severity that there can
2 be no doubt that the disablement resulted from it.

3 It is submitted in addition that where
4 a disability arises in part due to such an occurrence
5 at work, and in part due to causes other than employ-
6 ment, or where the injury aggravates, accelerates or
7 activates an existing condition, any compensation
8 allowed should be only that attributable to the injury
9 sustained. In this connection this Company observes
10 that this concept is included in The Workmen's Compens-
11 ation Act of British Columbia (Section 7 subsection
12 (5)) and in that of Nova Scotia and, to a lesser extent,
13 in those of Alberta, Manitoba and New Brunswick.

14 While this Company would welcome an
15 exhaustive investigation of back disabilities and the
16 compensation outlaid therefor including the basis upon
17 which compensation has been paid for such cases over
18 the course of years, it must repeat that at present the
19 compensation being paid for these disabilities results
20 in a cost to industry that is far beyond industry's
21 proper contribution.

22 This type of thing, the Commission, I
23 think, should have some idea of the type of case that
24 we bump into. Here is a man - now he is reported, doing -
25 this is no question of late reporting in these ones - what
26 they call cleaning a drift he picks up a shovelful
27 of muck and feels a pain in his back. Now, a shoveller's
28 occupation is to shovel muck and he picks up a shovel
29 full of muck, an ordinary normal thing he is doing
30 and he feels a pain in the back and it results in



1 compensation.

2 A man was reaching to turn off a throttle
3 on a jackknife machine when he felt a pain in his
4 back. This is just reaching up and turning off a
5 handle on a drilling machine.

6 A man was picking up a chute brick, a
7 tag end of timber underground, he was picking up the
8 chute brick when he felt a pain in his back. Compensation.

9 A man picked up a wrench which weighs
10 about a pound, picked up a wrench off the top of a
11 slusher and felt a pain in the thorax region of his
12 back - compensation.

13 These type of cases --

14 THE COMMISSIONER: Compensation allowed
15 in each case?

16 MR. OSLER: Compensation allowed in all
17 cases. I suggest that none of these from what we
18 can see show, I suggest, anything which would properly
19 bring it within the Strand Palace idea. In certain
20 instances there is no pre-existing condition, in other
21 instances there is no actual thing which relates
22 strictly to the work. For instance, you take the
23 man who has no history of any defects, this was that
24 first one I gave you about cleaning the drift, no
25 history of any defect or no condition so that you
26 are away from the Strand Palace case entirely; he is
27 not more susceptible.

28 In the second case, there was a suggest-
29 ion --

30 THE COMMISSIONER: I suppose very few of



1 these back injuries for which compensation is awarded,
2 have any history of a blow.

3 MR. OSLER: Oh, no blow.

4 THE COMMISSIONER: Falling off the ladder
5 would be enough, you would be prepared to allow that?

6 MR. OSLER: Oh, falling off the ladder,
7 there would be no doubt.

8 THE COMMISSIONER: But you think there
9 should be something to indicate a severe wrench?

10 MR. OSLER: Something out of the usual.
11 After all, sir, a man leans down and picks up a case
12 of beer, it is just as usual as leaning down and
13 picking up the end of a piece of timber. A man
14 reaches to turn something off, I reach to turn off a
15 light, I reach into a shelf to put a plate on the
16 shelf, there is really no direct causal connection
17 with the work the man is doing. I reach and pick up
18 a wrench - what is the difference of reaching anywhere.

19 I gather the medical profession call
20 those non-traumatic back cases, this type of thing -
21 this picking up.

22 I would like to draw your attention to
23 a remark by Mr. Justice Turgeon in his report when
24 he was dealing with this difficulty and the matter
25 arising out of and in the course of employment. He
26 was commenting upon the decision of the House of Lords
27 in the Partridge, Jones and John Payton Limited versus
28 James case.

29 THE COMMISSIONER: Is that the Turgeon
30 report you are reading from?



1 MR. OSLER: The Turgeon Report, page 67,
2 sir. I am quoting from that case:

3 "The accident arises out of the employment
4 when the required exertion producing the
5 accident is too great for the man under-
6 taking the work whatever the degree of
7 exertion or the condition of health. In
8 each case the arbitrator ought to consider
9 whether in substance, as far as he can
10 judge on such a matter, the accident came
11 from a disease alone, so that whatever
12 the man had been doing it would probably
13 have come all the same, or whether the
14 employment contributed to it".

15 In other words, did he die from that
16 disease alone or from the disease and employment taken
17 together. Just the fact that something does eventually
18 happen to a man at work that could just as well have
19 happened otherwise should not be the basis of compen-
20 sation, as long as there is nothing directly connected
21 with the work that the man is doing which is resulting
22 in this back disability.

23 Mr. Justice Turgeon, as you know, sir,
24 has dealt with a long section on this, or his Report
25 has a long section on this matter. At page 173, I,
26 with respect, quarrel with some of his statements, Mr.
27 Justice Tysoe, but I do think that when he is review-
28 ing some of the authorities that the expression "Would
29 cause" that an accident or industry is "Truly work
30 caused" should be of some assistance in trying to



1 focus our mind on exactly what would constitute a
2 compensable injury.

3 This was referred to particularly on
4 page 179 when he was dealing with Dilworth v. N.A.
5 Stamp Commissioners case referred to there, "...that
6 disablement arised out of his employment, in other
7 words, if the disablement is truly work-caused." and
8 this appears throughout in his Report and I think it
9 is perhaps more descriptive when we are considering
10 "arising out of the work"; the mere fact that a man is
11 at work during the day, the mere fact that the man
12 is going through normal activity during his working
13 hours should not constitute the grounds for compensa-
14 tion in these type of back cases.

15 Mr. Justice Tysoe says at page 183:

16 "The evidence before me makes it plain
17 that disabilities of the back can develop
18 and will not infrequently develop from
19 conditions which cannot properly be
20 related to a man's employment. There
21 may be congenital defects in the spine
22 out of which, with the advancing of years,
23 grow incapacities of varying types and
24 degrees. Arthritic conditions may appear
25 and progressively increase in severity
26 in persons whose employment requires no
27 physical effort at all, even in persons
28 who have not done a tap of work of any
29 kind in their lives.

30 I can readily understand the problems
that face the Board in determining whether



1 a particular disablement in a particular
2 individual has been caused by his work
3 when there has been no accident or
4 unusual incident that can be said to have
5 'triggered' it. Always the question is,
6 'Was this man's disablement caused by
7 his work or by the operation of natural
8 causes such as increasing age, congenital
9 or insidious disease, or the natural
10 progression of some constitutional defect?"
11 There he is dealing, of course, with the
12 matter really of a basic condition existing as to
13 whether some situation has occurred which has brought
14 it on. He, I must admit goes back, I think, to
15 "Was this work caused"? And in order to be work
16 caused, it must be something inherent in that work -
17 not trifling occurrences: It must be something, I
18 believe, inherent in the work.



Now, he goes in his recommendation, you will note, Mr. Commissioner, in suggesting a radical amendment to their Act, and he found perhaps an answer which I couldn't find to start with, in looking at our definition as now amended by the 1962-63 Act. But you try, as he points out, to substitute, "disablement arising out of and in the course of employment" for the word, "accident" in section 3 (1) and you get the ludicrous example of it appearing almost continuously. The only reason for putting it in, that I can see, is to remove the presumptions which appear in our Act under section 3. The real difficulty I find myself in, sir, in perhaps anticipating a question which might be asked by yourself or counsel is, What is your recommendation? I feel that, as a result of the 1962-63 amendment by inclusion of the words "disablement arising out of and in the course of employment," a situation has arisen whereby back cases which are not truly work-caused are receiving compensation. The answer to this, of course, is that this is Board administration, not related to the Act. I am in no way throwing bricks at the Board or being critical of them, because I think by and large this company's experience has been very favourable as far as the Board is concerned, as I think you will see in the company's brief. I wonder if the Board's interpretation or the interpretation they are applying perhaps in their claims or medical sections to this amendment has, in fact, been too broad. Obviously a removal of that amendment and substitution of something more restrictive would be desirable. I have not at the moment a suggested



1 substitution, although I do feel at the moment that that
2 is perhaps the source of the present evil, what I believe
3 is an evil, that these disabilities which are not work-
4 caused are, in fact, brought into the Act.

5 THE COMMISSIONER: There are comparable
6 words used in other legislations, aren't there?

7 MR. OSLER: Yes. I must admit I have not
8 studied it and I have not looked at the evidence, but
9 again in the report of Mr. Justice Tysoe there is a long
10 section dealing with this matter of definition of
11 "accident", and also dealing with limited disability, as
12 well as back cases and he reviewed that very carefully.
13 I don't know how you would solve the problem, I must
14 admit. But the finding there, the criticism or the
15 thought in his report was that the British Columbia
16 Board had not been giving it sufficient latitude. There
17 are figures quoted in this case where almost up to 50
18 per cent of back cases were being thrown out. This is a
19 long cry from our incidence of down to 7 per cent. You
20 will notice also that in the logging industry the
21 incidence of back cases was higher than in ordinary life,
22 non-logging, but that information was supplied on a very
23 qualified basis, that there is great room for quarrelling
24 with the accuracy of ^{the} statistics.

25 I don't think there is anything else I
26 can usefully add at this moment.

27 MR. ESTEY: Somebody spoke to me on
28 behalf of the Mining Association. They have a gentleman
29 here from the north who has to go back, and I was wonder-
30 ing if you could hear him now and ask Mr. Osler some



1 questions on his very comprehensive submission after
2 the other gentleman.

3 THE COMMISSIONER: If there is some
4 situation of that kind and it is not going to take long -
5 it is now almost 1:00 o'clock - would you like to compress
6 it in a short period?

7 MR. GIRDWOOD: Mr. Commissioner, on
8 behalf of the Ontario Mining Association, I would like
9 to add a few remarks to Mr. Osler's presentation. Cer-
10 tainly I can clarify, I think, some of the areas which
11 perhaps were a little bit doubtful, and I think within
12 15, 20 minutes I could cover that aspect. But with
13 your permission, sir, due to the fact that I was physically
14 not able to get down the last few days, I should like to
15 refer back very briefly to the tribunal set-up, which
16 could be done very briefly after lunch.

17 MR. ESTEY: Is it convenient for you to
18 appear at 2:00 o'clock instead of now? It is now five
19 minutes to 1:00.

20 MR. GIRDWOOD: I would be quite happy
21 to leave it till this afternoon.

22 THE COMMISSIONER: Very well, we will
23 resume promptly at 2:00.

24 --- Luncheon adjournment.
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1 --- On resuming at 2:00 p.m.

2 MR. ESTEY: The Ontario Mining Association.

3 SUBMISSION OF

4 ONTARIO MINING ASSOCIATION

5 MR. C.P. GIRDWOOD: My name is Charles
6 Girdwood, President, Ontario Mining Association and Vice-
7 President and General Manager of Dome Mines.

8 If I may start off, sir, perhaps with the
9 discussion that took place this morning, that is the
10 particular areas that are under consideration today, and
11 with your permission and the permission of counsel, I
12 would like in the latter part of my presentation to
13 refer back to the tribunal set-up, which we did not cover
14 in the last two days. It is in our brief, but I would
15 like to refer to it briefly.

16 THE COMMISSIONER: Do it in your own way.

17 MR. GIRDWOOD: Thank you, sir. Referring,
18 then, to accidents arising out of and in the course of
19 employment, the Association's brief deals with that
20 section as follows:

21 The introduction of Clause (a) (iii) to
22 Section 1 (1) so that it reads:

23 "In this Act, 'accident' includes
24 disablement arising out of and
25 in the course of employment."

26 We submit that this has so changed the
27 definition of an accident which, when coupled with
28 requirements for giving notice of the occurrence of an
29 accident, as provided in Section 21 (1) and (5), creates
30 a basis for making awards for disablement that does not



1 necessarily relate only to an on-the-job incident.

2 The Association is not suggesting the
3 deletion of either of these sections but it does maintain
4 that industry should not be put in a position where it
5 becomes liable for the effect on a person of normal, daily
6 off-the-job activities that have equal casual relation-
7 ship to the incident as do the similar kind of activities
8 which occur on-the-job.

9 In cases where there is such scope for
10 casual consideration, we maintain that greater emphasis
11 should be placed on relating the accident to conditions
12 or activities unique to the work situation, and on
13 reporting of the detail of the accident before leaving
14 the place of employment.

15 There were examples given in the Inter-
16 national Nickel's presentation this morning, very ably
17 presented, and I might say in connection with the
18 statistics that were given, any one segment of our
19 industry could produce similar statistics to bear out
20 these figures. I haven't any of them here today, but
21 any one segment of our industry could produce similar
22 statistics relating to back injuries. Obviously, back
23 injuries are of major concern to the mining industries,
24 as I know they are to the Compensation Board. The broad-
25 ening of the definition of an accident did cause our
26 Association and our member companies considerable
27 concern in 1963 when it was put in. The old definition
28 is rather unwieldy, and I certainly agree it needed some
29 clarification. It says:

30 "In this Act (a) ' accident '



1 includes, (i) a wilful and
2 intentional act, not being
3 the act of the workman."

4 Now, at the time the change was made The
5 Workmen's Compensation Board in their explanatory notes
6 in making such a change did say that the word "accident"
7 as used in the Act is re-defined in order to clarify its
8 meaning in accordance with present administrative practice.
9 In other words, they were administering the Act in a
10 broader sense than the original definition so that the
11 section that does concern the mining industry in particular -

12 THE COMMISSIONER: When they said they
13 were clarifying it in order to conform to current
14 administrative factors, it would mean it would allow the
15 Board some legislative authority for what they were doing.

16 MR. GIRDWOOD: Yes, sir.

17 THE COMMISSIONER: But, at that time,
18 according to the figures given by Mr. Osler, there had
19 been no such surge in back injury cases as there has
20 been since. I think it certainly broadens the inter-
21 pretation which can be put on accidents today with regard
22 to back cases. You have no recommendation on any change
23 in the definition or any specific wording?

24 MR. GIRDWOOD: Certainly not on the spur
25 of the moment, but I do believe that our Association
26 could come up with what we might consider to be a better
27 wording. I would like to file this, sir.

28 EXHIBIT NO. 7: Section of the old Act.

29
30 The present Act allows for too broad an



1 interpretation of an accident, and there are examples,
2 certainly, where it is quite doubtful in the evidence, as
3 we see it from the company point of view, that the
4 accident did actually occur at work. In some cases,
5 obviously we have information and witnesses who can
6 testify that such an accident did occur and it occurred
7 at work, and those are obviously brought to the attention
8 of the Compensation Board and they deal with them
9 appropriately.

10 THE COMMISSIONER: What is the result in
11 those cases?

12 MR. GIRDWOOD: Where it can be shown and
13 witnesses can produce evidence to the contrary, the Board
14 obviously turns it down, so there is no problem there.
15 But it is surprising the grey cases and the areas which
16 do disturb us. Referring to back injuries, it is certainly
17 a major problem to the industry and a major concern.
18 The figures are impressive. The increase in the number
19 of back cases, curiously enough, occurs quite frequently
20 in the younger ages, not necessarily in the older group.
21 I think it will be of interest to you, sir, that at least
22 I know of two of our member companies, and there are more,
23 I know, but I know of two who have pre-employment back
24 examinations, and in one case the company has said they
25 reject 25 per cent of their applicants as having some
26 pre-existing abnormality of the back. In some cases I
27 know the applicant is not rejected but on the advice of
28 the doctor he perhaps then is hired for work of a lighter
29 nature, or at least his pre-existing condition is noted
30 in the mine record. I don't know of any case where such



1 information has been used, where the Board has used the
2 information to reject a claim.

3 I think, too, on seeing statistics in our
4 industry, the percentage of back cases in our class 5,
5 the percentage of back cases is lower than in heavy
6 industry generally. It was referred to as a heavy
7 industry this morning. It might be due to the fact that
8 our medical examinations are very strict, our physical
9 examination. And reference was made to chest Xrays, and
10 that will come up later in the industrial disease section.
11 But certainly the medical examinations are very strict
12 and any abnormalities are mentioned. I thought it might
13 be of interest in relation to the back injuries.

14 I don't think I have anything further to
15 add on that section. Would you like to question, or shall
16 I go on?

17 MR. ESTEY: Are you going to deal with
18 appeals?

19 MR. GIRDWOOD: I would like to cover the
20 other items on the agenda today and deal with appeals.

21 On the waiting period, sir, the Honourable
22 Mr. Justice Roach concluded that the waiting period
23 should be four working days. The Act now provides that
24 the waiting period be three calendar days.

25 We have heard today that the Board does
26 interpret that as two plus days, and it should surely be
27 that rather than three calendar days. It might be 24
28 hours. But I am going to refer to that in the brief where
29 it says

30 Since a three day waiting period appears



1 to be a reasonable compromise in balancing administrative
2 cost considerations with reduction in income earning
3 ability, and that this latter factor is related to
4 opportunity to earn, it would seem that waiting period
5 should logically be related to loss of work time.

6 For this reason we maintain that the
7 waiting period should be defined as those three days on
8 which the claimant was scheduled to work. With the
9 wide-spread adoption of the five-day work week the use
10 of calendar days is not an equitable criterion and will
11 be less so in the event that the work week may become
12 less than five days.

13 As an alternative, we might throw out for
14 your consideration 24 working hours. That would get
15 around the two-plus problem. But we do know that the
16 Board is interpreting the Act as two-plus days rather
17 than three calendar days. The Association certainly does
18 agree that the waiting period should not be reduced. It
19 is a deterrent, as was mentioned this morning. It is
20 quite common, as was mentioned earlier, in insurance,
21 deductible section of insurance, and I personally agree
22 very much with the International Nickel presentation on
23 that particular aspect this morning.

24 Dealing with the next item of casual labour,
25 I find it very difficult to know just what casual labour
26 in relation to the mining industry is. We have no
27 casual labour, if you use the word "casual" in its usual
28 sense. Every employee at every mine is on the payroll
29 and the company is assessed at the rate pertaining to
30 that particular section of the industry, so that there is



1 no casual labour employed by the mining industry to my
2 personal knowledge.

3 Reference was made to contractors' men.
4 Any responsible company does ensure that any contractor
5 working for him has his men covered by compensation.
6 That is one of the stipulations that most companies, and
7 I think all companies, make in giving work to a contractor.

8 Reference was made to personal situations,
9 snow shovelling, and so on. I don't think these are
10 relevant to this particular discussion. I, personally,
11 and I think anyone here who has employed a snow shoveller,
12 would be very careful to see that they had personal
13 coverage, accident insurance, to cover that particular
14 situation.



1 On the reporting of accidents, again I find
2 I fully concur with the International Nickel presentation
3 but I would like to comment on one or two aspects of it.
4 I am sure that all employees in the mining industry are
5 aware of the necessity of reporting accidents. I have
6 visited most, if not all, of the operations in Ontario
7 over a period of some thirty years and I have^{never} failed to
8 see the Workmen's Compensation Board notices being posted
9 in very prominent places which definitely state that
10 every workman suffering an accident must report it
11 immediately. Most companies go a step farther and they
12 have their own notices, perhaps under a spotlight that
13 would catch everybody's eye - sometimes in different
14 languages, stating that it is essential to report
15 accidents immediately, no matter how small, and that
16 clause is usually added to such notices.

17 Again, in the indoctrination of new employ-
18 ees, most companies do cover that very carefully. The
19 employee on the first day or two is given a thorough
20 indoctrination in company policies and procedures,
21 particularly as to safety, quite apart from his on-the-
22 job safety training that he will be given, the escape
23 ways in the mine, how to get out of the mine in case of
24 fire, but certainly what to do if an accident occurs.

25 Where language may be a problem, most
26 companies use interpreters and many of our staff people
27 are workmen, I am referring particularly to the under-
28 ground sections, workmen have been brought up through
29 the labour force and they do speak languages and it is
30 very easy to get your story across through an interpreter.



1 In connection with the late reporting of
2 an accident, these are problems. There have been
3 examples where months have gone by before a company
4 realizes that an accident had occurred or an incident
5 had occurred. In most cases, the company does not even
6 hear of those accidents, as was mentioned this morning,
7 until they get a letter from the Board stating that a
8 workman has been to a doctor and the doctor has turned-
9 in his report. Then an investigation is immediately
10 started and there are cases where the incidents can
11 be discovered or witnesses are available who may be
12 able to support the workman's claim, but in many cases
13 no witnesses are available and the accident report made
14 by the company obviously then can only be that "It is
15 claimed that" on such and such a day or such and such
16 a week an accident or incident did occur.

17 One of the requirements of the Workmen's
18 Compensation Board is, before a man goes to the doctor
19 he has a referral slip which is usually made out by the
20 First Aid Department and, in that respect, some doctors
21 certainly do treat men without having such a referral
22 slip, but in most cases they are very co-operative and
23 they send the employee back to the mine or to the
24 employer and obtain such a slip. But, obviously, they
25 would not refuse to treat the man in the first instance.

26 Referring to the six month clause, that
27 is Clause 21 of the Act, I can only say that I don't
28 think the Association - and in my experience I don't
29 think that that is a bad feature of the Act, I think it
30 is good, but I would like to say that the Board should be



1 very careful to make a much more thorough investigation
2 of such accidents than perhaps they have in the past.
3 Admittedly, time is a factor there and people can
4 forget, witnesses can forget, but it is surprising how
5 many witnesses can be rounded up when an employee asks
6 for such help. We are surprised in many cases at the
7 number of people who will step forward and say that
8 they saw it and then you check back and they weren't
9 even in the work place, but I will just leave that for
10 your consideration.

11 I think it would be helpful to both the
12 claimant and to the company if, when an investigation is
13 going to be made, that the company be so advised ahead
14 of time. It is Board practice I know to do it in some
15 cases, particularly the outlying areas, but the companies
16 could be helpful and I am sure it would be helpful to
17 the workman to know that an investigation is going to be
18 made into his particular claim. I speak of that in the
19 context that now exists in that all of a sudden one
20 morning an investigator will arrive at the main office
21 and say they are investigating a certain accident.
22 While our records are incomplete, there are obviously
23 people we know could contribute to it who may not be
24 available on that day so that the investigation is
25 altogether too hurried, in my opinion. I think it
26 could be much more thoroughly investigated in these few
27 cases that go beyond the normal period.

28 THE COMMISSIONER: Does the investigator
29 come from North Bay?

30 MR. GIRDWOOD: As a rule they do come from



1 North Bay, but we have had them from Toronto.

2 THE COMMISSIONER: You ask that there be
3 some notice to you of when an investigator is coming in?

4 MR. GIRDWOOD: I think that would be very
5 helpful to the company. I know it would be helpful to
6 the claimant and to me if I was the claimant.

7 When you said North Bay, I am referring to
8 our particular area where I am located in the Porcupine
9 District. The Red Lake area of our province is dealt
10 with from Fort William-Port Arthur, and an investigator
11 goes in from there. I might say the investigators are
12 very able people and they do a job. I do know of cases
13 where they have antagonized the doctor by being a little
14 bit curt and short with the doctor and perhaps question-
15 ing the doctor's diagnosis, but I think those are
16 individual cases that would occur at any time in any
17 situation.

18 THE COMMISSIONER: The investigator also
19 sees the doctor, does he?

20 MR. GIRDWOOD: As a rule they do, yes sir.

21 I think that covers my remarks, sir, on
22 that particular aspect.

23 MR. ESTEY: Are you going on to deal with
24 anything else, Mr. Girdwood?

25 MR. GIRDWOOD: With your permission, I
26 would like to revert back to the Appeal Procedure and
27 I will make it as brief as possible because I know you
28 have thoroughly covered that in the last couple of days.
29 It was physically impossible for me to be on tap and
30 the Association did ask that I present that section of



1 the report which has not yet been presented formally.

2 On page 9, sir of the Association brief,
3 the Appeal Procedure.

4 In addition to the preceding comments
5 which have all related to specific provisions in the
6 Act, we would also comment on the procedures for the
7 adjudication of claims.

8 Our view is that the basis for adjudica-
9 tion must centre on medical evidence if only because
10 a claim must be related to physical disability or
11 impairment. While we concede that the medical aspect
12 is highly technical and very specialized, we do not
13 suggest that a doctor should have to make the critical
14 decision as to the award. However, we do maintain
15 that any decision as to an award must be compatible
16 with the medical evidence relative to the situation.

17 The four levels of adjudication, namely,
18 the claims level, the review committee, the appeal
19 tribunal and the board hearing, are logical and
20 organizationally necessary because of the large number
21 of claims which must be processed - about 1000 per day.

22 We suggest that a primary consideration
23 for appealing a decision of the review committee should
24 be the submission of new evidence bearing on the
25 decision of the review committee. This evidence should
26 be submitted first to the review committee for con-
27 sideration and if it decides that it is not competent
28 to make a decision, it must refer the matter to the
29 appeal tribunal. A similar procedure should be followed
30 for appealing a decision of the tribunal.



1 Unless a procedure such as this is
2 adopted we believe that the effectiveness of The
3 Workmen's Compensation Board organization will be
4 reduced, and greater pressures will be developed to
5 have the decisions of the Board subject to review
6 by the courts of law. Neither of these conditions
7 is desirable to either the employees or the employers
8 as a whole.

9 We recommend that tribunal hearings
10 should be conducted in the same manner as an inquest,
11 with a competent lawyer acting in a capacity similar
12 to that of the Crown Attorney at an inquest, organiz-
13 ing the presentation of pertinent information. We
14 believe that such a change would avoid creating the
15 conditions that pit the employer against the employee
16 to the detriment of good employer-employee relations.

17 THE COMMISSIONER: The only change you
18 suggest in the Appeal Procedure is before proceeding
19 to appeal from the Review Board or from the Appeal
20 Board that, in the event of new evidence made available,
21 it be referred to them, be again referred to them
22 before proceeding.

23 MR. GIRDWOOD: Certainly that is one
24 thing we feel is very important and would be a real
25 addition to the present set-up.

26 I would like to refer in a personal
27 vein, to my own experience with my own company on
28 the appeal system. I may say that my Company has had
29 seven cases before an Appeal Tribunal of which I
30 personally have attended four on behalf of our Company.



1 Associate companies had two and I have dealt with the
2 evidence before and after with the General Manager
3 of that company. One aspect to that concerns me
4 greatly - and I know it concerns the doctors in our
5 area - is the fact that they give evidence when they
6 are present at a tribunal hearing before the claimant
7 and, in some cases, witnesses have been excluded, but in
8 some cases witnesses have been present when the
9 doctor's evidence is given. I submit that that puts
10 the doctor in a very embarrassing position. I know
11 many of our doctors in the Porcupine area of this
12 Province are very loathe now to attend any tribunal
13 hearing because of the disclosure of medical informa-
14 tion to a board or to a number of people which, after
15 all, is private information between the doctor and
16 the patient and the board, because the doctor certainly
17 in his reports makes reports to the Board and says
18 a lot of things that he normally would not say to the
19 patient. I refer - I am sure that the Board's files
20 have all that information, but the doctors are very
21 loathe to appear because in many cases their evidence
22 is contrary to the claimant's case and, obviously,
23 in a small community - and I think you have got to
24 realize these things in the context of a small
25 community rather than a large area such as Toronto, --

26 the doctor's practice suffers and they have
27 pointed that out to us. I, personally, have had
28 three doctors say that they will not appear at a
29 tribunal unless they are subpoenaed because of that
30 situation.



1 THE COMMISSIONER: What do you suggest?

2 MR. GIRDWOOD: I suggest that the Board
3 do subpoena doctors to appear at a tribunal hearing.
4 I have written to the Board on occasion and asked
5 them to consider evidence of specialists that I knew
6 was relevant to the case. I didn't know how it would
7 go one way or the other, but I felt in all fairness
8 that it should come out and be a part of the tribunal
9 record and the Board's reply had been that if it
10 considers such evidence to be essential or helpful
11 then it would be up to the company to have the doctor
12 or the specialist appear and we have no means of
13 forcing the doctor against his will to appear at a
14 tribunal, but the tribunal does have the power to
15 subpoena the doctor where they consider - and I think
16 in most cases the doctor's evidence is essential at
17 a hearing.

18 I think my other complaint with the
19 tribunal hearings to date has been that they are con-
20 ducted along very legal lines, and it suggests to the
21 employee that the company is opposed to his obtaining
22 compensation. I think that is the last thing in any
23 company's mind in 99.9% of the cases. All they are
24 interested in seeing is that the evidence be presented
25 and that the tribunal consider all the evidence, not
26 just the evidence at the tribunal, but all the evidence
27 that is in their file and any other important medical
28 evidence bearing on the case. Again, in a small
29 community, this type of thing fosters strong emotional
30 disturbances. Many of the claimants -- and again we



1 are referring to a very small segment, a very small
2 part of the compensation claims, but the emotional
3 aspects are very strong. We have had lives threatened
4 in our area unless compensation was awarded, the
5 complainant being very highly emotional and almost
6 on the verge of a mental situation. I think those
7 are understandable.



1 I think those are understandable.

2 THE COMMISSIONER: This situation doesn't
3 arise under the English Act because there industry con-
4 tributes and labour contributes, so there is enough
5 local pressure without having to get industry into the
6 picture at all. Nobody is really disputing these
7 decisions as a general rule; there is enough pressure on,
8 they don't have to do it.

9 MR. GIRDWOOD: All I am saying, sir, is
10 that I think the tribunal set-up is a very fine thing.
11 I think it does give the employee the feeling that he is
12 being dealt with by a group of people. He goes before a
13 board and he feels he is getting real consideration, and
14 certainly he does, but I think that the tribunal could
15 be conducted under much less legal lines.

16 THE COMMISSIONER: What legal lines are
17 you referring to? What change do you suggest in the
18 tribunal hearings? As I understand it, the questions are
19 conducted by the members of the tribunal themselves.

20 MR. GIRDWOOD: They are, sir. Certainly
21 witnesses should be sworn in to properly give evidence.
22 But I submit that when a member of the tribunal asks a
23 company, "What have you got to say and will you sum up
24 your case. What has the claimant got to say? What has
25 his representative got to say? Will you sum up your
26 case," leaves the impression that it is a legal hearing,
27 where an employer is pitted against employee. I am sure
28 any one of us in this room could conduct such a hearing
29 by swearing in witnesses and conducting it on an informal
30 basis, with whatever legal steps are necessary for



1 swearing in witnesses, but without leaving the impression
2 that the company is opposing his claim. The company
3 appears in most instances merely to see that all the
4 evidence is presented and to bring out the essential
5 facts upon which an impartial tribunal makes its
6 decision.

7 THE COMMISSIONER: You don't suggest that
8 either industry or the claimant shouldn't be represented.
9 All you say is that there shouldn't be any summing up
10 by either side.

11 MR. GIRDWOOD: I think that the mere
12 terms that may be used by the tribunal members tend to
13 create a legal atmosphere which I think is not conducive
14 to a good situation. I must say that I have noticed
15 that the tribunal are changing their *modus operandi*
16 and they are conducting it on less legal lines than they
17 did at the start. I think one of ours was the first, if
18 not very close to the first, conducted along those lines.
19 But I think there has been an improvement, I am very
20 pleased to see it, because I am very much concerned about
21 the employer-employee-doctor relationship being disturbed.
22 I think that the medical profession, certainly those that
23 I have discussed it with at Porcupine, feel strongly on
24 that point, that they are loath to appear, and the only
25 ones I have had to appear have done it on a purely
26 personal basis. I have asked them to appear to assist
27 me, to assist the claimant and to assist the tribunal in
28 arriving at a fair decision. Unfortunately, in most of
29 the cases, the doctor's evidence is prejudicial to the
30 claimant, so the claimant goes away with the feeling the



1 doctor is opposed to him, too.

2 THE COMMISSIONER: Unless the medical
3 evidence on the Board's file is favourable to the claimant
4 that is, he goes in there with a summary, he goes in
5 blind, and unless that evidence is viva voce at the hear-
6 ing, he feels he has never been informed about it at all,
7 perhaps

8 MR. GIRDWOOD: I think the only way to
9 get around it would be for the tribunal to announce right
10 at the beginning that the doctor is going to give evidence
11 at the request of the Board, he is there at the request
12 of the Board. If it is assumed that his evidence is not
13 helpful to his claim, then he is there on behalf of the
14 company.

15 THE COMMISSIONER: Is the doctor usually
16 there at these hearings?

17 MR. GIRDWOOD: He is never there unless
18 he is asked. In the cases where I have appeared he has
19 never appeared unless asked. I have never known of cases
20 where a claimant has asked the doctor to appear. There
21 have been cases when no evidence has been presented before
22 the tribunal and their findings revert to, in one case,
23 a language difficulty where a fellow thought he was
24 reporting a knee injury and the doctor was actually
25 treating a shoulder injury, but the tribunal's interpre-
26 tation was that the claimant thought he was reporting a
27 knee injury, which is rather absurd, as a matter of fact.

28 THE COMMISSIONER: Is the claimant called
29 to give medical evidence in those cases? Is there any
30 other doctor than the doctor you have mentioned called?



1 MR. GIRDWOOD: Not in my experience. There
2 may be in some cases.

3 THE COMMISSIONER: It is pretty difficult.
4 Obviously it is desirable to stay away from a legalistic
5 approach as much as possible. The Board is trying to
6 administer something in which it has no personal interest.
7 We are faced with these problems which you are telling
8 us about.

9 MR. GIRDWOOD: There is one other point
10 on the tribunal that I would like to mention. I would
11 like to suggest that the tribunal in dealing with indus-
12 trial diseases - and this gets into that area - that the
13 tribunal should not make any decision unless they have an
14 expert opinion in connection with, particularly, industrial
15 diseases. There have been cases that decisions will have
16 been made as far as companies know without having such
17 expert opinion. There are very renowned doctors today,
18 world renowned doctors in the Department of Health, Work-
19 men's Compensation Board, who should be called to consult
20 with the tribunal before decisions are made.

21 THE COMMISSIONER: You are not necessarily
22 saying that they need to be called as witnesses. It is
23 as long as there has been a report.

24 MR. GIRDWOOD: As long as they are con-
25 sulted. That is all I have, sir.

26 THE COMMISSIONER: Thank you.

27 MR. ESTEY: Mr. Osler, may we resume with
28 you?

29 MR. OSLER: One thing before you start,
30 Mr. Estey. I might say that the remark that these back



1 injuries appear to occur more to younger men is quite true.
2 Frequently in those cases it is younger men, apprentices,
3 and so on.

4 MR. ESTEY: I suppose the mining industry
5 shouldn't be surprised to find they have more back injuries
6 than they have in other industries. International Nickel
7 seems to have a lot of back claims. It seems to me that
8 that wouldn't be surprising, when there is a lot of
9 physical work done in a mine, isn't there?

10 MR. OSLER: It is all comparative. I have
11 no figures to compare in other industries. I have no
12 statistical evidence to support that at that moment.

13 THE COMMISSIONER: In that class there has
14 been a 100 per cent increase in two years.

15 MR. OSLER: I might say, sir, that I
16 gave some figures this morning and they were noted down.
17 I think probably I should review those figures so that
18 they are completely accurate and there is no misunder-
19 standing of them. Perhaps it would be as well if I just
20 reviewed those right now. A couple of these figures may
21 be one or two out.

22 In 1951, of 57 back claims filed, three
23 were allowed. In 1960 there were 287 back claims, of
24 which 187 were allowed. In 1961 there were 212 claims
25 of which 177 were allowed. The claims dealt with in
26 1965 - we haven't got a full year to report - of 589
27 submitted, 556 were allowed.

28 THE COMMISSIONER: I think you gave us
29 the increase in labour force between 1961 and 1965.

30 MR. OSLER: From 1951 to 1965 the increase



1 in labour force was less than 2,000. I think it went
2 from approximately 15,000 to 16,500. There was a 1,500
3 increase at that time.

4 THE COMMISSIONER: Was that the figure
5 for 1961?

6 MR. OSLER: 1951. In 1951 it was not
7 quite 15,000 men, and in 1965 the average was 16,500. We
8 have not included in this figure what we might call our
9 office workers. This is based on our bargaining unit
10 type of operation; it does not include our office workers.
11 We would have to add 2,000 to those figures.

12 MR. ESTEY: Every time somebody gives a
13 figure, somebody wants one more. I notice that in your
14 figures you have 42 rejects out of 598, and these are all
15 back claims.

16 MR. OSLER: Yes.

17 MR. ESTEY: What is the batting average,
18 if I may use that term, on the non-back claims?

19 MR. OSLER: I don't think we can give you --

20 MR. ESTEY: Are you saying there is a
21 tendency to approve the back claims more than a tendency
22 to approve the non-back claims?

23 MR. OSLER: It is about six to seven
24 per cent disallowed. I would have to try and get that
25 for you. Our back cases, claims - I am sorry, these
26 would be non-traumatic, these are the ones without a
27 specific injury like a fracture, they run about not quite
28 16 per cent of all our compensation claims.

29 MR. ESTEY: Mr. Osler, in your comments
30 in connection with accident reporting you referred to



1 the British Columbia discussion before Mr. Justice Tysoe,
2 and at page 425 His Lordship reports that the equivalent
3 to section 21 (5), I guess, should read:

4 "that neither the Board nor
5 the employer have been
6 prejudiced,"

7 and you say that is a statement of fact. We have:

8 "if the Board is of opinion
9 that the claim ... ought to
10 be allowed."

11 I have paraphrased that.

12 MR. OSLER: Yes. If you are dealing with
13 the latter part of it, it is "such special circumstances".
14 It is not just general. It is still the opinion of the
15 Board, I agree.

16 MR. ESTEY: It is not really special
17 circumstances.

18 MR. OSLER: No.

19 MR. ESTEY: Is there any significance to
20 the distinction that it be a question of fact rather than
21 the opinion of the Board?

22 MR. OSLER: It is strictly the Board's
23 interpretation. On the other hand, it seems to me that
24 there is a distinct difference as to is it a fact or is
25 it not a fact, that the Board is prejudiced, "if in the
26 Board's opinion". Although it appears to be prejudiced,
27 I don't think it is.

28 MR. ESTEY: It is a question of the
29 finding of a fact.

30 MR. OSLER: Yes.



1 MR. ESTEY: It is the same body that is
2 going to reach the finding.

3 MR. OSLER: Yes.

4 MR. ESTEY: I suppose if the Board says,
5 "We are of the opinion that the fact is a fact", that
6 might be sufficient?

7 MR. OSLER: I don't know. This is some-
8 thing which is solely for the Board to do at the top level
9 or at the tribunal.

10 MR. ESTEY: Moving on to page 18 of your
11 brief, I want to be sure we have your idea on this question
12 of time on a disabled case. The first paragraph commenc-
13 ing on page 18 says:

14 "It is submitted by the Company
15 that in cases of disablement
16 notice must relate to the
17 occurrence of the event from
18 which it is alleged the dis-
19 ablement arose "

20 I take it that what you are saying there
21 is that the six-month yardstick in section 21 is not that
22 the disablement is brought to the attention of the employer
23 but rather the origin of the disablement.

24 MR. OSLER: Yes. I think if you read the
25 Act, "disablement arising out of and in the course of
26 employment" and "compensation is not payable unless notice
27 of the disablement arising out of and in the course of
28 employment," and so on. If you want to take a technical
29 interpretation of that, the man might have a sore back
30 today, in September, and he might say, "Well, I don't have



1 to report it today; I will base it on something that
2 happened two years ago". It is strictly on the interpre-
3 tation of an accident.

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1 MR. ESTEY: I didn't want to get in/^{to}that
2 but if you do substitute for the accident the definition
3 then you go right around in a circle.

4 MR. OSLER: Yes.

5 MR. ESTEY: And the effect of that is you
6 take the presumption and you virtually nullify that
7 presumption if you change the "And" to an "Or" in
8 sub-section (1) by reading the worker section the way
9 you are proposing.

10 MR. OSLER: I am sorry, I didn't follow you.

11 MR. ESTEY: Well, the definition is "Dis-
12 ablement arising out of and in the course of employment".

13 MR. OSLER: That is right.

14 MR. ESTEY: But if you take the sub-section
15 (2) of section 3 and take the presumption there and
16 you change the "And" into an "Or", that is the effect
17 of it?

18 MR. OSLER: No, if you are applying the
19 definition of accident to disablement, it puzzled me
20 for some time because if you take section 3 (1) which
21 is the section where compensation does arise you get
22 a repetition really of the words "Arising out of and in
23 their course of" - "Injury by accident arising out of
24 and in course of employment arising out of and in course
25 of employment." It is ludicrous, senseless.

26 I was very puzzled by that and the only
27 explanation that I have seen which appears to make any
28 sense is that suggested by Mr. Justice Tysoe and he
29 bumped into this situation and he says that the need
30 for the qualification attached to disablement was



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1 obviously to avoid the presumption which arises in sub-
2 section 2 of section 3, and he takes the position that
3 if you just put "Disablement" in your definition with-
4 out any qualification, then your presumption works and
5 you have any kind of disablement of any type or form
6 practically, and he said it was for that reason that
7 in finding accident, disablement had to be qualified
8 by "arising out of" "in course of" and at his suggestion
9 of an amendment to that section you will find he still
10 finds that "arising out of" and "in the course of employ-
11 ment" must be retained in the definition of disablement.

12 MR. ESTEY: And in the operating section
13 as well?

14 MR. OSLER: Yes.

15 MR. ESTEY: I was going to put the propo-
16 sition to you for your comments while we have you here
17 that the happy result of all that is to change sub-
18 section 3 (2) into a proposition which means that if
19 you find either the element that arises out of or the
20 element that it is in the course of then you have the
21 other half of it supplied by statute?

22 MR. OSLER: That is right.

23 MR. ESTEY: That is the effect of it?

24 MR. OSLER: Yes, but if you take the first
25 two parts of the definition of accident, this will be
26 section 1, sub-sections 1(a) and 2, your presumptions
27 should apply to those parts of the definition, but the
28 presumption should not apply to the third part. This
29 is what --

30 MR. ESTEY: But the effect of it is that
it does?



1 MR. OSLER: Does it? I don't know.

2 MR. ESTEY: Let me put the question to you
3 this way: If you take sub-section 2 of section 3 and
4 read that as a statutory presumption operating when
5 you find one of two elements present, if you find that
6 the accident arose out of the employment, you have a
7 presumption that it was in the course of employment,
8 is that right?

9 MR. OSLER: Yes.

10 MR. ESTEY: And vice versa?

11 MR. OSLER: Yes.

12 MR. ESTEY: Now, will you turn back to
13 disablement in the definition? Disablement "arising out
14 of" and "in the course of employment", the legislature has
15 prescribed two standards, but when you get down to
16 sub-section(2) or (3) you only have to prove one?

17 MR. OSLER: We could get into a nice
18 argument, but isn't the fact that the very definition
19 insofar as disablement is concerned, the very definition
20 of accident, the only time you can use sub-section(2)
21 of section 3 in regard to disablement is when you have
22 first found that the disablement has arisen out of
23 "And in the course of employment". In other words, it
24 is not an accident, a disablement is not an accident
25 until you have first found it has arisen out of and
26 is in the course of employment. It is only then that
27 you can say this constitutes an accident to apply it
28 in this part and, as I say, this is what Mr. Justice
29 Tysoe came to the conclusion had been the very purpose
30 of that.



1 MR. ESTEY: That, of course, makes you
2 run in a circle?

3 MR. OSLER: Only insofar as disablement
4 is concerned.

5 MR. ESTEY: That is what we were talking
6 about.

7 MR. OSLER: Because the idea is, he comes
8 to the conclusion that the legislature in this instance
9 had the intent not to apply these presumptions in the
10 case of disablement. Now this is a conclusion he drew.

11 MR. ESTEY: I am really going at this in
12 this way in order to bring you around to what the Board
13 seems to be doing, and I am just putting to you for
14 your observation whether or not the Board is not
15 properly interpreting the statute. It is the statute
16 maybe we are quarelling with, rather than the interpre-
17 tation?

18 MR. OSLER: Well, that could be.

19 MR. ESTEY: Because of the fact that
20 sub(2) seems to allow the Board to go back and elevate
21 the thing to an accident if they find either of those
22 two elements present?

23 MR. OSLER: Well, if that is what they
24 are doing, then I think they are wrong, because I don't
25 think you can apply sub-section(2) of section 3 until
26 you have an accident so defined.

27 MR. ESTEY: That is the point I was going
28 to bring up.

29 MR. OSLER: It can't arise, you can't have
30 that presumption.



1 MR. ESTEY: At least the statute should
2 not sensibly be so interpreted in your view?

3 MR. OSLER: That is correct.

4 MR. ESTEY: In a very wordy way, that may
5 be the nub of the problem?

6 MR. OSLER: Maybe.

7 MR. ESTEY: As to what may be an accident?

8 MR. OSLER: The only thing on that, this
9 is reverting a little bit to what has been said before,
10 but the interesting thing is that when the 1962 and
11 1963 amendment came in, there is no doubt there had
12 been an increase in back cases and, as I think has
13 been pointed out in the original bill submitted to the
14 legislature, it was an attempt to reflect the present
15 practice of the Board, I think is the explanatory note,
16 and I think this was mentioned in the debate of the
17 legislature at the time by the Minister of Labour.

18 The fact of the matter is that after the
19 amendment, rather than just reflecting the administra-
20 tion that had been going on at that time which was
21 allowing more back cases, there was a gross and rapid
22 increase; in other words, I think it had expanded the
23 field beyond the practice at the time.

24 MR. ESTEY: Flowing from that now, I would
25 like to ask you about what you then stated as your
26 next proposition to the Commissioner that some of the
27 difficulties can be overcome - you stated you did not
28 have time to check the grammar of the thing, but if
29 you added after the word "Compensation" in 21(5) the
30 proposed sub-section (C) of Mr. Justice Tysoe --



1 MR. OSLER: Yes.

2 MR. ESTEY: And that, I take it, you are
3 saying is necessary in order, if not from a grammatical
4 essential viewpoint, it is necessary to carry out the
5 philosophy announced by the legislature in the definition
6 of the thing they are going to compensate?

7 MR. OSLER: Yes. You are referring now
8 to section 21 (5)?

9 MR. ESTEY: Yes, and I refer over to
10 Tysoe at 425.

11 MR. OSLER: Right.

12 MR. ESTEY: When we get down to applying
13 this definition of an accident, we get into the
14 difficulties you pointed out in connection with those
15 specific files that you brought with you, and I am
16 wondering what your views would be on the proposal
17 made to Mr. Justice Tysoe by one of the logging
18 associations that the definition of accident should be
19 as follows - now, part of it runs along the version
20 in our Act and so I am only going to read the part
21 which is novel in the proposition. After you go
22 through (A) and (B) of ours, he then says, "All if
23 resulting from a sudden and tangible happening of a
24 traumatic nature". In your view, does that help to
25 isolate the accident as compensable as against
26 developments which are quasi disease in origin?

27 MR. OSLER: Frankly, Mr. Estey, and this
28 is my own personal opinion, I must qualify that, yes
29 to an extent. It may be that that is slightly too
30 narrow, but this is where I have the grey problem



1 of attempting to solve this at the moment anyway. I
2 have not got a sensible suggestion. A sudden and
3 tangible happening of a traumatic nature, now traumatic,
4 if I am correct --

5 DR. HAZELWOOD: The word "trauma" means
6 injury.

7 MR. OSLER: It may be too narrow. You may
8 be then left with the fact that a man must have to
9 have a severe blow, it may narrow it too much.

10 MR. ESTEY: I take it that clearly trans-
11 lating means "A sudden and apparent happening of an
12 injurious nature"?

13 MR. OSLER: It may be too narrow. On the
14 other hand, although I find again it may be hard to
15 describe what caused/is the type of expression that
16 was quite freely used in the Tysoe report, I can't
17 consider what caused picking up something which really
18 is done in connection with any other thing he may do
19 during the day in the course of bending down. If he
20 is bending down to tie up his shoe laces before he
21 gets to his shoe laces it has been suggested that there
22 is no compensation, but if he is bending down to pick
23 up a tool or a piece of wood or something before he
24 gets to pick it up, before he arrives there to put his
25 hands on it and an injury occurs you can't differentiate.

26 MR. ESTEY: I am putting this proposition
27 to you because I am a little troubled by what you said
28 this morning. What is your view as to why a man should
29 not be compensated if he is paid to pick up a timber
30 and he picks it up and he gets back trouble as a result



1 of picking it up?

2 MR. OSLER: Well, I think it must have a
3 more direct causal connection with the work that he is
4 doing, not just the fact that he is picking up a block
5 of wood or picking up a wrench in the fact that this is
6 part of it. Surely there must be some distinction
7 between that, because it is just pure happenstance,
8 pure chance, utter and complete chance. He might have
9 been picking that wrench up out of his car. There is
10 nothing unusual, there is no unusual situation, nothing
11 has happened out of the ordinary.

12 MR. ESTEY: Except that he was paid to do
13 it, he did it and he ends up with an injury. Now, why
14 shouldn't he get compensation? That is what puzzles me.

15 MR. OSLER: He ends up with a claim that
16 this caused a disablement. This is what the man is
17 saying "When I bent over and went to pick up this block
18 of wood, that is what caused my injury". That is where
19 the great problem comes.

20 MR. ESTEY: Well, presumably, if he
21 hadn't picked up the block, he wouldn't have got the
22 sore back, so when he was paid to pick up the block,
23 why shouldn't he be compensated?

24 MR. OSLER: But is that, in fact, true?
25 If you are satisfied with the evidence that in picking
26 up this specific block the injury was completely
27 related to that -- I think there must be something
28 unusual about it.

29 MR. ESTEY: Well, I have a presumption
30 going in my favour when I say if you picked up the block an



1 didn't have the back injury before you picked it up
2 and you have it after you picked it up and it is part
3 of your duty to pick it up, then I can't for the
4 moment see why International Nickel says I should not
5 get compensated. I just want to be sure we understand.
6 Can I put it to you this way: Are you drawing a dis-
7 tinction between being paid to do something which, by
8 its nature, will attract the risk of injury as
9 against being paid to do something which, in the
10 ordinary course of events, has no consequence to it at
11 all?

12 MR. OSLER: I think you have got to move
13 to that line. Surely, here again, you have got to go
14 back to the very basic scheme of this legislation: What
15 was the very basis of it. If you recall at that time
16 they were talking of injuries which occurred and the
17 only way you could recover in parts of this Act was
18 to indicate some negligence. We have passed, I admit,
19 from that line, but I still think it must be a direct
20 consequence of what he was doing, the work he is required
21 to do, if he slips, if he falls. This is the thing.
22 Now, the slip may not be a blow, it may not be a thing
23 of that nature, but it must be some specific incident -
24 not just merely going through a normal down and up
25 procedure.

26 MR. ESTEY: In other words, an injury but
27 for which the accident would not have happened? An
28 action but for which the injury might not have happened?

29 MR. OSLER: As I pointed out this morning,
30 a man goes into our First Aid and reports an injury.



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1 The First Aid employee completes a sheet/which, at
2 the time - and this is on the specific question of
3 is
4 back injuries - /the man's name and so on, the work
5 place at the time of the incident, who the foreman
6 was.
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1 We have the question as to the time of the incident and,
2 "When did you first feel any pain and notice a swelling?
3 What were you handling at the time? Were you alone? Were
4 you pushing or pulling? If you were lifting, how high?
5 Were you standing, stooping or kneeling? Was this part
6 of your regular work? Was there anything unusual about it?
7 Did you slip and, if so, what caused you to slip? Did you
8 fall? If you fell, what caused you to fall?" There is a
9 great attempt to find out where these things came from.
10 I think it has to be something unusual.

11 MR. ESTEY: Are you saying, therefore,
12 Mr. Osler, that it is not the wording of the Act which
13 gives rise to this extension but the way the Board is
14 reading the Act as it now stands?

15 MR. OSLER: Yes. On the other hand, if
16 the statute were to be amended in relation to the true
17 type of injury, then the Board would not have the broad
18 interpretation that it has.

19 MR. ESTEY: And, finally, you say there
20 is no change in the type of work being done which can
21 explain the crescendo of back claims?

22 MR. OSLER: With the introduction of the
23 modern motor-driven equipment there is less chance of
24 back strains than there was before.

25 MR. ESTEY: I take it the fact of these
26 back claims being honoured is attributable to the wording
27 of the statute that was introduced in 1963 or the meaning
28 attributed to those words by the Board since that time.

29 MR. OSLER: I think that is a fair
30 statement.



1 MR. ESTEY: Thank you, Mr. Osler, doctor.

2 THE COMMISSIONER: We will adjourn for
3 ten minutes.

4
5 Short recess.

6 MR. ESTEY: Ontario Forest Products
7 Association. Northern Forest Products Limited. Ontario
8 Federation of Labour. Ontario Federation of Construction
9 Associations. No one here from the O.F.L.? Ontario
10 Medical Association. We have dealt with that; the Mining
11 Association we have dealt with. The Provincial Building
12 and Construction Trades Council of Ontario. Retail Council
13 of Canada. Rio Algom. Mr. Yourt.

14 MR. YOURT: Your Lordship, I would like
15 to preface my remarks by saying that if we had had as
16 thorough an investigation into these matters previous to
17 legislation we might not have these problems.

18 THE COMMISSIONER: Do you suggest that
19 the legislature should have some representation on these
20 things?

21 MR. YOURT: We agree with the Ontario
22 Medical Association.

23 Interpretation of an Accident - Section 1. - (1)

24 The addition of Clause (iii) to Section
25 1 (1) which reads:

26 "In this Act 'accident' includes,
27 disablement arising out of and in
28 the course of employment"

29 has, according to our experience, encouraged some workmen
30 to expect compensation for disabilities which are not



1 primarily caused, but merely become apparent, at work.
2 This applies when the disability is associated with a
3 physical exertion similar to activities commonly occur-
4 ring off the job. Furthermore, this misconception has
5 been more firmly established by certain adjudications
6 made since the clause was introduced. A specific example
7 will serve to illustrate the point.

8 A carpenter while carrying tools up a
9 stairway, in June 1964, experienced a pain in his chest
10 which was later diagnosed as a heart condition. It was
11 considered a non-occupational disability by the attending
12 physician. Sickness insurance benefits from a contribu-
13 tory plan were applied for and paid at \$50 per week up to
14 a total of \$1057 over a period of 5 months even though
15 the mine closed its regular operations at the end of
16 August. In the meantime a claim was filed for compensa-
17 tion. The Board's decision, following consideration by
18 the Review Committee, is quoted below:

19 "Following a complete investigation
20 in connection with your claim, a
21 complete review was made at high
22 level and your claim has been
23 allowed for the acute episode
24 of your disability and this
25 completes your entitlement
26 under the Act"

27 Compensation payments were made accordingly
28 to the latter part of November 1964 and amounted to
29 \$1431. Insurance benefits were not refunded. Therefore
30 the claimant received a total of almost \$2500 over a



1 period of 5 months. In August 1965, some months after the
2 announcement of the Board's new Appeal structure, the
3 claimant's union appealed for an extension of benefits
4 and a hearing before the Appeal Tribunal was held in
5 October 1965.

6 The union representative claimed that the
7 workman's heart condition was caused on the job and that
8 there was no pre-existing condition; this was supported
9 by a statement signed by the attending physician as
10 follows:

11 --- (This is a quote from the transcript.)

12 "This is to certify that the
13 above was not treated before
14 June of 1964 for chest pain
15 or symptoms of heart disease
16 nor has he complained of similar
17 pain during the years he attended
18 the ... Clinic since July of 1958."

19 The company representative established,
20 and the claimant admitted, extensive off the job work
21 involving long hours, mainly delivery of eggs to house-
22 holders in the community of Elliot Lake and surrounding
23 mine townsites and occasionally moving furniture with
24 his truck. This was during adverse winter conditions and
25 after weekend work. This took place over a period of 6
26 years previous to his disablement in June 1964. In
27 addition he operated a farm with the help of his family
28 and travelled back and forth weekends, a distance of 143
29 miles each way.

30 A member of the Appeal Tribunal pointed



1 out that the claim was allowed "for the acute episode"
2 following a report on an examination by an "Independent
3 Specialist" and further that "there was quite a good deal
4 of head scratching before the claim was allowed at all ...
5 because there haven't been any real severe or extraordinary
6 stress associates".

7 The company representative indicated "that
8 the Board was most generous in its allowance of this
9 Claim ... up until November 1964 and that no further
10 payment should be made after that date".

11 The Appeal Tribunal's decision reads in
12 part as follows:

13 "On consideration of all the
14 evidence including the transcript,
15 the Appeal Tribunal is of the
16 opinion that no causal connection
17 has been shown between the claimant's
18 employment on or about June 1964,
19 and the disability which becomes
20 manifested at that date.

21 The Appeal Tribunal is of the
22 opinion that this is not an
23 allowable claim under the terms
24 of the Act and, therefore, must
25 reject the claim. However, in
26 consideration of all the circum-
27 stances, the Appeal Tribunal orders
28 that no refund be demanded."

29 This decision was deemed fair by the
30 Company but it was appealed by the claimant and a hearing



1 was held in January 1966 before the Board. In spite of
2 the workman's statement, supported by his attending
3 physician, that there was no evidence of a pre-existing
4 heart condition prior to his disability in June 1964, the
5 Board's top officials, constituting the final stage of
6 appeal, ruled that the claimant

7 "has a pre-existing heart
8 condition which was aggravated
9 ... June, 1964 during the course
10 of his employment,"

11 and then extended compensation benefits. This example
12 illustrates the dilemma in which the Board's staff is
13 placed in endeavouring to interpret Clause (iii). This
14 type of decision, or reversal of an earlier decision
15 introduces a number of undesirable aspects, namely it:

16 1. Does not comply with the Board's own
17 interpretation of Clause (iii) as described by Mr. G.S.
18 Black in the April 1966 issue of the Board's News
19 Bulletin and quoted below, in that there was no sudden
20 or unusual exertion.

21 "Entitlement, however, under
22 this Amendment requires that
23 the disablement which a workman
24 suffers must have some causal
25 relationship with the work
26 being performed. It is not
27 sufficient that the disablement
28 comes on during work; rather,
29 there must be something about
30 the work which can be considered



1 to have caused the disablement.

2 The cause might be strenuous work,
3 awkward position, unaccustomed
4 strain or even a movement arising
5 out of the work which is reasonable
6 to consider may have caused the
7 disablement."

8 2. Casts a reflection on the judgement of
9 the Claims Department, the Review Committee, and the
10 Appeal Tribunal.

11 3. Puts the attending physician in an
12 untenable position in regard to doctor-patient relation-
13 ship because he had not indicated the disability as
14 occupational.

15 4. Undermines the accident prevention
16 efforts of the employer and his staff and the majority of
17 workmen who are sincerely endeavouring to prevent accidents.
18 The occurrence of a compensable disability with no apparent
19 reason destroys the motivation to work safely. How could
20 a supervisor anticipate or prevent such a manifestation
21 of disablement without knowledge of a pre-existing
22 condition?

23 5. Discourages employers from providing
24 suitable employment to workmen with inherent or pre-
25 existing disabilities and seriously hampers rehabilita-
26 tion of those injured on the job.

27 Employers, in cooperation with conscientious
28 disabled workmen, have demonstrated their willingness to
29 provide employment for them. This policy adds greatly
30 to the productivity of the nation and should not be



discouraged by imposing on employers an unjust share of the cost of disablement not caused on the job.

6. Increases the temptation for some workmen with inherent disabilities or disabilities suffered off the job to report them as having occurred at work. We submit:

1. That Clause (iii) has introduced too much of a tendency for decisions to be influenced by sympathy for a disabled workman rather than strictly by a causal relationship with his actual exertion when the disability was experienced.

2. That Clause (iii) is unnecessary because causal relationship can be adequately established under Clauses (i). Now, in view of the discussion before the recess, I feel I should withdraw any reference to the next section there because it is a legal matter and I am not qualified to speak on it.

Therefore it is recommended:

1. That Clause (iii) be eliminated or reworded to bring in the idea of an incident somewhat similar to before.

2. That the cost of benefits for disabilities of workmen not "arising out of and in the course of employment" be covered by social legislation. Such an arrangement probably would:

1. Eliminate human tendency of adjudicators to stretch the benefit of doubt in favour of the injured workman into the realm of social security.

2. Reduce temptation of some workmen to seek compensation for inherent disabilities from Board



1 funds.

2 3. Alleviate the workload of the Board's
3 staff, particularly those serving on Tribunal Appeal and
4 Board hearings because many appeal cases appear to be on
5 the borderline between occupational and non-occupational
6 disabilities.

7 4. Remove many of the frustrations
8 experienced by management and supervisors in their efforts
9 to prevent injuries and to rehabilitate and employ
10 partially disabled workmen.

11 5. Alleviate the embarrassing situations
12 which the attending physicians find themselves when they,
13 in borderline cases, find a disability to be of non-
14 occupational origin but the workmen believes it to be
15 occupational.

16 THE COMMISSIONER: That is a very good
17 and interesting gist of what the social legislation seems
18 to suggest. It is pretty wide, I think.

19 MR. YOURT: That seems to be the area
20 of our problem.

21 THE COMMISSIONER: At least what you say
22 is what has been achieved at the moment, a social relief
23 rather than an insurance relief.

24 MR. YOURT: Yes.

25 THE COMMISSIONER: However, it is going
26 to be compensated for.

27 MR. YOURT: Yes. I must say our
28 experience is much similar to International Nickel as to
29 back cases. We have not brought this out, but our
30 experience has been similar. There has been an increase



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1 in back claims since 1963 and a more rapid increase since.

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1 THE COMMISSIONER: Maybe Mr. Estey has
2 some questions.

3 MR. ESTEY: I think perhaps it is more
4 convenient, Mr. Commissioner, to deal with the questions
5 at the same time. There is a fair amount of over-
6 lapping in this one between what has been said and
7 what Mr. Yourt is going to say.

8 THE COMMISSIONER: I suppose your company
9 is a member of the Mining Association?

10 MR. YOURT: Very much so. I might add
11 that my work in the last twenty-eight or twenty-nine
12 years all on health and safety, has been very closely
13 related with the Association. For eight years I
14 worked with the Association. The next item then,
15 Reporting an Accident, I covered this the other day,
16 but I think it should be read in because it strictly
17 relates to the reporting of an accident.

18 Page 6, Reporting an Accident - Section
19 21 - (1) & (5)

20 Prompt and accurate reporting of an injury
21 or condition associated with a disability, is very
22 essential to effective - and I would like to change
23 my previous copy of the brief, treatment of an injury,
24 investigation of an accident, prevention of further
25 injuries and proper adjudication of claims. I felt
26 this should go in, in view of some discussions we have
27 had this morning. These objectives are seriously
28 hampered if an accident is not reported before a work-
29 man leaves the employer's premises. Here again, I
30 would to elaborate somewhat in view of the discussions



1 this morning. We, in our Company, and many other
2 companies, I might say most companies in the mining
3 industry, are very deliberate in our instructions to
4 the workmen to report all injuries, especially the
5 puncture wounds that were mentioned this morning.
6 Many of those cases, even if they appear minor, are
7 sent for medical attention in order to prevent
8 infection later. We feel we instruct the employees
9 and we want those reported. We do not feel that
10 there is any problem and too much work involved in
11 this and these people are asked to report it and take
12 time off and we send them out to the doctor if we feel
13 that it is necessary and I would say I think we do
14 that in most cases. Furthermore, permissiveness on
15 the part of the Board towards late reporting facili-
16 tates the filing of claims for disabilities caused
17 off the job.

18 Therefore it is recommended:

19 1. That the following clauses in Section
20 21 - (1) be more strictly enforced by the Board

21 "compensation...is not payable unless
22 notice of accident is given as soon as
23 practicable after the happening of it and
24 before the workman has voluntarily left
25 the employment in which he was injured".

26 We feel that there is no hardship involved
27 here, that there is plenty of opportunity to report
28 it promptly.

29 2. That subsection (5) be either elimina-
30 ted or at least reworded so that it does not unduly



1 negate the pertinent clauses in subsection (1) quoted
2 above.

3 3. That statements made by the injured
4 man, witnesses and all others concerned, immediately
5 or within several days following an accident be given
6 prime credence by the Board in all stages of adjudica-
7 tion. This should be in preference to verbal and
8 often dramatized versions of conditions surrounding
9 an accident made from memory at appeal hearings some-
10 times years later. And, as I said before, as I
11 recall one at least back to 1957.

12 THE COMMISSIONER: This is what you
13 expect the Board to do, or what I would expect the
14 Board to do, but there is little I can do to make
15 them do it. I can maybe comment on this kind of
16 thing and say this should be their approach and it
17 might help the Board but that is as far as I could
18 go on matters of that kind.

19 MR. YOURT: We feel that a harder look
20 should be taken at claims that are not reported
21 according to this first section.

22 THE COMMISSIONER: I would expect that.

23 MR. YOURT: 4. That a time limit of
24 three months be set for accepting appeals from Board
25 decisions and that appeals be granted only after new
26 evidence is presented to the Board.

27 THE COMMISSIONER: On what ground do you
28 make that suggestion?

29 MR. YOURT: It is our opinion from exper-
30 ience at hearings, particularly since the new structure



think
was set up many of the workers/that here is
another chance of getting many of these claims
reversed.

THE COMMISSIONER: Perhaps in view of
the letters that now go out to claimants or those
whose claims have been adjudicated, this rule might
be satisfactory as long as it was not made to
apply to decisions that have been made prior to the
present field structure being set up.

MR. YOURT: It is in that area that we
have had some difficulties because the evidence given
at a number of these hearings - and they can be checked
in the transcripts - bear little or no relation to
the facts recorded at the time of the accidents.

THE COMMISSIONER: Well, unfortunately,
as far as I understand it, it was not the practice of
the Board previously - Mr. Kerr will be giving
evidence and he can tell us if I am wrong - to, in
their letter of rejection or whatever it was,
state, "Well, you have this right of appeal".

MR. YOURT: We feel that has invited,
it is almost like a carrot before a donkey.

THE COMMISSIONER: Now that you have it?

MR. YOURT: Yes.

THE COMMISSIONER: But on the other hand
you have Mr. Justice McRuer sitting up here on Civil
Rights and one thing and another and one thing in
representations to him that bothers him are these
dealings with administrative tribunals where there
is no right of appeal to the court. Then they say



1 the right of the man to appeal within the tribunal
2 must be made clear. These are the submissions that
3 have been made to that body and, speaking for myself,
4 there seems to be good substantial merit. Whether
5 under those circumstances you need all those steps of
6 appeal is another matter. But a man, it seems to me,
7 is entitled to have that information in view of the
8 fact that many of them have not the advice of
9 union representatives, maybe they are just men with
10 little education who don't understand that they
11 have that power to go on, particularly these foreigners,
12 these newcomers to Canada, I should say.

13 MR. YOURT: You are speaking regarding
14 the time limit in this case.

15 THE COMMISSIONER: I am speaking about
16 the three month time limit on appeal. Well, that
17 is your submission.

18 MR. YOURT: We are thinking of that in
19 terms of some of the very old ones that most people
20 have forgotten the exact conditions and it has been
21 a bit of a problem. The others, regarding the new
22 evidence, we feel that most of the essential evidence
23 or important evidence is gathered immediately, partic-
24 ularly at the time of an injury.

25 THE COMMISSIONER: That certainly, it
26 seems to me should be the primary consideration before
27 the Board, that evidence that is close to the happen-
28 ing is more valuable than evidence that is far removed.

29 MR. YOURT: I would like to re-emphasize
30 that in the transcripts of the hearings the recent

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1 study has very little relation to what was recorded
2 at the time of the day of injury.

3 THE COMMISSIONER: I do not doubt that
4 is true in many cases.

5 MR. YOURT: Then, regarding the waiting
6 period. The change from 'working' days to 'calendar'
7 days has resulted in:

8 1. Discrimination against workmen
9 injured early in the week because they do not have the
10 benefit of regular days off to qualify for compensa-
11 tion.

12 2. Tendency for attending physicians
13 to inadvertently stretch periods, and admittedly
14 stretch periods of disability over a week-end even if
15 the workman was fit for work on a day when normally
16 there is no work available. Consequently, many minor
17 injuries occurring, say, on a Thursday have become
18 compensable because the man could not return until
19 Monday although disability lasted only one day.

20 THE COMMISSIONER: Well, why does he
21 have to stretch it to Monday when there is Thursday,
22 Friday and Saturday? Does he have to report for work
23 in order to be off work the fourth day?

24 MR. YOURT: Yes, even - yes, we would
25 like to see - and this apparently is not practical
26 according to the medical people - we would like to
27 see if disability only lasted one day there is the
28 return which we go by on the day he is ready whether
29 it is a Saturday or Sunday to be fair to the people;
30 otherwise, it is discrimination against the people

1 who are hurt on Monday. The medical people admitted
2 that this is the tendency that when you ask the man
3 when is he going to work he will say Monday and the
4 date on his work slip will be that day even though
5 he may be able to go to work on Saturday.

6 THE COMMISSIONER: That is an abuse
7 that occurs in some cases. Well, there is nothing
8 to stop us making a regulation if we didn't approve
9 of the change that had been made by the legislature
10 but, as I have already pointed out, once these things
11 become law and embodied in an Act, it is difficult
12 to get them to change them back.

13 MR. YOURT: Sir, I believe there are
14 other examples where working days are followed in
15 the provinces. You mentioned this morning that you
16 might use working hours instead of days. At the
17 moment I see no objection to that.

18 THE COMMISSIONER: Well, of course, it
19 goes without saying then that you are also opposed to
20 doing away with it entirely?

21 MR. YOURT: We feel that it should not
22 be less than three working days. We feel it should
23 be working days and that at the moment this idea of
24 hours we have not given full consideration but, in
25 my experience, I do not see any problem in administering
26 it and it would then become a matter of twenty-four
27 and a fraction hours instead of two and a fraction
28 days and it would be compliance with the Act as it
29 reads.

30 Now, I would like to mention at this

1 this time that apart from the costs or the administra-
 2 tion problem here, one of the main reasons why we
 3 want the waiting period maintained is that it is, you
 4 might say, one of the last vestiges of incentive
 5 to prevent accidents and that is what our main con-
 6 cern is about.

7 THE COMMISSIONER: I just want to follow
 8 your argument on that. You say that it is of value
 9 in encouraging people to prevent accidents?

10 MR. YOURT: Yes, the narrower you bring
 11 your waiting period, the easier it is to get a claim
 12 allowed and I don't know I am sure that this is the
 13 proper way to put it, but it is to some extent a way
 14 of life to get compensation. It is easier all the
 15 time.

16 THE COMMISSIONER: If the accident is
 17 not going to be very severe and only going to dis-
 18 able him for a day or two but he is going to lose a
 19 day or two's pay, he is going to be more careful in
 20 trying to avoid accidents.

21 MR. YOURT: That is right, that was
 22 part of the workman's contribution in the earlier
 23 Act. The seven day period was more of a deterrent.

24 We submit that days on which no work has
 25 been scheduled have no bearing on the purpose of the
 26 Workmen's Compensation Act and therefore should not
 27 be part of the waiting period.

28 It is recommended that the wording in
 29 Section 3 -(1)(a) be changed to read:

30 "does not disable the workman for a period



1 of at least three working days or
2 possibly twenty-four working hours".

3 We highly respect the abilities and
4 integrity of the Board and members of its staff but
5 believe that interpretation of the Act and especially
6 fair adjudication of borderline claims is hampered
7 by certain clauses which in effect, constitute social
8 legislation.

9 THE COMMISSIONER: Any questions, Mr.
10 Estey?

11 MR. ESTEY: Yes, one or two, Mr.
12 Commissioner. On that last point of your wait
13 period, I take it that your submission, Mr. Yourt,
14 is that without getting into whether it should be
15 shorter or longer than it now is, you think the
16 waiting period should be measured in terms of the
17 man's earning power and therefore it should be working
18 days and not calendar days?

19 MR. YOURT: Yes.

20 MR. ESTEY: And, by working days, you
21 mean days on which, if all things had been as before
22 the accident, he would have worked?

23 MR. YOURT: Right.

24 MR. ESTEY: And that he must be out of
25 action for some wage producing period of time before
26 he becomes eligible?

27 MR. YOURT: Right.

28 MR. ESTEY: So, if he is hurt on a Friday
29 afternoon and he ordinarily could get back to work on
30 Saturday morning, he would not be entitled to



1 compensation?

2 MR. YOURT: No.

3 MR. ESTEY: And if ordinarily he could
4 get back to work Sunday morning, he would not be
5 entitled to compensation?

6 MR. YOURT: Right.

7 MR. ESTEY: And, in fact, it is not until
8 he is unable to get back on three successive working
9 periods that he is entitled, that is what you are
10 saying?

11 MR. YOURT: That is right.

12 MR. ESTEY: I take it if that represents
13 an increase in the deductible period over what we
14 have now, that your position is that, in principle,
15 whether it is an increase or not, it should be
16 measured in terms of loss of income due to accident?

17 MR. YOURT: Right.

18 MR. ESTEY: Then, this carpenter example
19 you give bothers me a little bit. This man was
20 carrying tools up the stairway and he had a heart
21 attack, that is the thing in a nutshell.

22 MR. YOURT: Right.

23 MR. ESTEY: I take it you are not saying
24 that because he suffered a heart attack which is just
25 a medical condition that happened to occur on the job,
26 that in all cases wouldn't this entitle him to com-
27 pensation?

28 MR. YOURT: Well, I believe the other
29 interpretation is that if he had a pre-existing con-
30 dition and then like the case of, probably you might



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fight
1 say, the security guard who was called to /a fire
2 and he was normally sitting at his desk and all at
3 once he was called to fight a fire and he got a heart
4 attack, that would be considered an aggravation.

5 MR. ESTEY: That is different, but you
6 are saying that if the carpenter was healthy, he
7 compensation
8 should get no/ under this circumstance?

9 MR. YOURT: That is right.

10 MR. ESTEY: But if he was healthy, he
11 would get compensation?

12 MR. YOURT: I am not sure I follow you
13 there.

14 MR. ESTEY: Well, if he had a pre-
15 existing heart condition, would that help him or
16 hinder him in getting a pension or compensation?

17 MR. YOURT: In this case it would have
18 helped him, yes, if he had something more than usual.

19 MR. ESTEY: I don't make myself clear.
20 Is it your position that the carpenter in your example
21 should get compensation if the heart attack occurred
22 by reason of his pre-existing condition?
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1 MR. YOURT: No, we feel that on climbing
2 the stairs with tools he had full control of how much he
3 carried and it was not an unusual condition of work.

4 THE COMMISSIONER: It seems to me that
5 unless it was true that he had a pre-existing heart con-
6 dition the occurrence itself would be sufficient, as in
7 the other situation. It might be in the nature of his
8 work, because of the strain involved or something of the
9 sort, but, notwithstanding there was no pre-existing
10 condition, he might be entitled to compensation. In this
11 case you mentioned he, apparently, was doing all sorts of
12 other things outside which might readily have brought on
13 a heart condition. But I, too, was puzzled whether in
14 the end it was on the basis that the man succeeded in
15 recovering, but apparently you brought it in for different
16 purposes.

17 MR. YOURT: It is more because of the
18 awkward duties which caused the condition.

19 MR. ESTEY: I am not clear on page two
20 of your brief whether you say it is a factor in determin-
21 ing his entitlement to compensation that he has or he
22 has not a pre-existing condition.

23 MR. YOURT: Well, in this case it wasn't
24 a factor to begin with.

25 MR. ESTEY: Forget about this case.

26 MR. YOURT: I am not sure I understand
27 your question, I am sorry.

28 MR. ESTEY: Is it your complaint that the
29 compensability is in some way influenced by whether or
30 not the workman has a pre-existing heart condition?



1 MR. YOURT: My complaint, generally, is
2 that the wording leaves too much --

3 MR. ESTEY: It isn't clear?

4 MR. YOURT: That is right. That is the
5 main reason for bringing in the example.

6 MR. ESTEY: Also, and unrelated to that
7 part of it, the doctor you referred to in the second
8 line from the top --

9 MR. YOURT: What page, please?

10 MR. ESTEY: Page two. The second sentence
11 says:

12 "It was considered a non-occupational
13 disability by the attending physician."

14 Did that physician attend as part of the
15 process leading to a claim for compensation : was he
16 called in just for the heart attack?

17 MR. YOURT: I would have to check that.
18 He was hospitalized by the attending doctor, and I believe
19 the same doctor okayed his claim for non-occupational
20 benefits.

21 MR. ESTEY: That is under the Company's
22 sickness plan?

23 MR. YOURT: That is right.

24 MR. ESTEY: But did that same doctor
25 make out a report to the Board?

26 MR. YOURT: I am not sure about that. I
27 would have to check that.

28 MR. ESTEY: How would it get to the
29 Board?

30 MR. YOURT: T



1 doctor attended him later.

2 MR. ESTEY: For the Board?

3 MR. YOURT: No, I think the man sought
4 another doctor, but I could establish that for you if you
5 wish.

6 THE COMMISSIONER: Was any claim made for
7 compensation at that time?

8 MR. YOURT: No.

9 THE COMMISSIONER: Only the claim against
10 the insurance company?

11 MR. YOURT: Yes.

12 THE COMMISSIONER: Would the claim for
13 compensation against the insurance company be affected in
14 any way even if the man had claimed and recovered
15 compensation from the Board? Was he entitled to both?

16 MR. YOURT: No, he is entitled only in
17 the plan to non-occupational.

18 THE COMMISSIONER: Only to non-occupational?

19 MR. YOURT: Yes.

20 MR. ESTEY: I suppose that plan has
21 exclusions as to Workmen Compensation cases?

22 MR. YOURT: It has, but in this case it
23 wasn't refunded.

24 MR. ESTEY: I was curious as to how the
25 report got to the Board.

26 MR. YOURT: I would be pleased to supply
27 that.

28 MR. ESTEY: We don't have the name or
29 the doctor.

30 MR. YOURT: No. I intentionally left it



1 out.

2 MR. ESTEY: You will let us know that?

3 MR. YOURT: Yes.

4 THE COMMISSIONER: Is the company notified
5 of insurance claims that are paid?

6 MR. YOURT: Yes.

7 THE COMMISSIONER: So you would be aware
8 of it?

9 MR. YOURT: Yes.

10 THE COMMISSIONER: That some doctor had
11 certified it as non-compensable?

12 MR. YOURT: On non-occupational benefits.
13 I would have to look into that part of it. It was done
14 through an insurance company, and I believe the personnel
15 people have some notification of it.

16 MR. ESTEY: It is part of this rejection
17 at the appeal level?

18 MR. YOURT: Yes.

19 MR. ESTEY: But there was no refund?

20 MR. YOURT: That is right.

21 MR. ESTEY: Have you seen that occur
22 before?

23 MR. YOURT: No. Well, not that I recall.
24 This, I would say, is a more glaring example.

25 THE COMMISSIONER: The Board may have no
26 power to recover the money.

27 MR. YOURT: Oh, yes, that is often done;
28 and we might have been requested to help in that respect,
29 to contact the man to make instalments to recover it.
30 That is common practice.



1 THE COMMISSIONER: The Board might recover
2 money that has been paid for some circumstances, perhaps
3 compensation fund money, but can the Board recover or
4 order insurance money under a separate contract to be
5 refunded?

6 MR. YOURT: No, the Board is not concerned
7 with the non-occupational part of it.

8 MR. ESTEY: The tribunal is saying that
9 they are not going to order the compensation payments
10 refunded, and I am asking if that is done very often?

11 THE COMMISSIONER: You are referring to
12 on appeal where it has been washed out?

13 MR. ESTEY: Yes.

14 MR. YOURT: I would venture the opinion
15 that it is a matter of sympathy again, in this case.

16 MR. ESTEY: I think, sir, that is all that
17 I want to ask you.

18 THE COMMISSIONER: Thank you.

19 MR. ESTEY: The United Electrical Workers.

20 SUBMISSION OF

21 UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA

22 MR. CARLESS: My name is Roy Carless,
23 Shop Committee Member, Compensation Officer, United
24 Electrical Workers.

25 Mr. Commissioner, the question I would
26 like to deal with is dealing with the definition of an
27 accident, and in our brief I will read, starting from
28 page three to seven.

29 A more liberal interpretation and defini-
30 tion of an accident than is presently provided.



1 Prior to April 1963 the Workmen's Compensa-
2 tion Act defined an accident as follows:

3 'accident' includes a wilful and
4 intentional act, not being the act
5 of the workman, and a fortuitous
6 event occasioned by a physical
7 or natural cause.

8 The interpretation placed by the Board on
9 this definition was that something out of the ordinary,
10 something of an unusual nature, must have happened in
11 order that an injury be recognized and made compensable
12 under the Act.

13 To use a rather simple example, the
14 following will illustrate the interpretation of the Act
15 in the period up to April 1963:

16 A workman was required to lift
17 castings from the floor to a
18 table for machining. This he
19 did many times in the course
20 of his daily work. When lifting
21 a particular casting, he suffered
22 a sharp pain in his back. He
23 reported to the plant surgery,
24 and gave the details of what had
25 happened to the nurse. It was
26 determined that he had suffered
27 what is commonly referred to as
28 a slipped disc. A claim for
29 compensation was made, which
30 was later rejected by the Board



1 because "nothing unusual had happened".

2 Another workman, under identically

3 the same circumstances as the above,

4 with the exception that he reported

5 he had slipped on an oil slick

6 while lifting the casting. His

7 claim for compensation was approved.

8 The fact he had slipped while lifting

9 was "an unusual happening" under the

10 interpretation.

11 This rigid interpretation resulted in

12 numerous claim rejections on grounds which can only be

13 described as a sheer technicality. Many injuries, arising

14 out of and in the course of employment, were thus made

15 non-compensable.

16 Repeated and strong protests were made by

17 workmen and their organizations against the injustice

18 inherent in this interpretation of the Act. In 1963 the

19 Act was amended on definition of an accident to the

20 following:

21 "accident" includes,

22 (i) a wilful and intentional

23 act, not being the act of the

24 workman,

25 (ii) a chance event occasioned

26 by a physical or natural cause, and

27 (iii) disablement arising out of

28 and in the course of employment.

29 The interpretation now placed on this

30 definition is, we understand, less rigid than that which



1 prevailed previously, and that claims are being allowed
2 based on establishing to the satisfaction of the Board a
3 causal relationship between the employment and the injury,
4 and not necessarily involving "an unusual happening".
5 This is certainly a considerable improvement, and we welcome
6 it as such.

7 However, our experience satisfies us that
8 the 1963 amendment to the Act, as interpreted by the Board,
9 has not eliminated the basic problem which existed under
10 the pre-amended Act. Claims are still being disallowed
11 because there was an absence of an unusual happening
12 where "causal relationship" is not established to the
13 satisfaction of the Board.

14 As an example we wish to quote the reply
15 of the Workmen's Compensation Board to a recent claim
16 made by a member of this union. We have omitted the name
17 and the claim number, but will, of course, provide this
18 information to the Commission, on this and other claims
19 we may quote, if requested. The following is a letter
20 from the Workmen's Compensation Board, dated June 24, 1966:

21 "Your claim for chest disability
22 has been carefully reviewed, having
23 regard for the reports presently
24 available.

25 "You state that on May 19th, 1966
26 you were bending over a tub at
27 work, when your foot slipped and
28 you fell forward. When this
29 occurred you experienced discomfort
30 in your chest and the matter was



1 reported to your employer's
2 first aid department. Following
3 this, you consulted Dr. _____
4 for treatment.

5 "According to your employer's
6 report, you reported to their
7 first aid department on May 19th,
8 1966 complaining of chest pain
9 which you stated had been present
10 since the previous day. At that
11 time you reported that you
12 believed the discomfort was due
13 to tension and made no indication
14 that this was the result of an
15 accident occurring during the
16 course of your employment. After
17 you consulted your doctor, you
18 returned to work and advised your
19 employer that the doctor had
20 indicated that your chest
21 discomfort was caused from heavy
22 lifting at work. You did not
23 report to your employer that you
24 had slipped on May 19th, and they
25 are unable to confirm that this
26 incident did occur.

27 "From reviewing the varied inform-
28 ation which has been submitted
29 regarding the cause of your
30 disability, it is not considered



1 that proof of accident in the
2 employment has been established.
3 There were no witnesses to your
4 alleged accident, and you are
5 unable to confirm the incident
6 which you describe. Accordingly,
7 your claim has been rejected as
8 it has not been shown that the
9 disability was the result of
10 accident in the employment.

11 "You are not entitled to receive
12 compensation benefits nor will
13 accounts for treatment of your
14 diagnosed disability, be accepted."

15 Aside from the reference in this letter to
16 the opinion allegedly expressed by the claimant to the
17 effect that he believed the chest discomfort was due to
18 tension, an opinion which should have no bearing whatsoever
19 on the claim, or the Board's disposition thereof, the
20 position taken by the Board in this case seems to have
21 been governed by the absence of verification of an accident,
22 i.e. having slipped, and therefore, establishing that
23 something unusual had happened.

24 Therefore, it would seem that the Board in
25 this instance did not apply the interpretation which
26 Article 1 (1) (iii) of the Act makes possible, namely the
27 causal relationship of regular and relatively heavy
28 lifting to the condition complained of, but rather relied
29 on the more restrictive section, Article 1 (1) (ii) which
30 still demands that something unusual, i.e. "a chance



1 event" must have happened.

2 We quote the above as an example of rigid
3 interpretation of an accident. It is by no means an
4 isolated case. We have record of others of relatively
5 recent date, and therefore must conclude that among the
6 great number coming before the Board, more than a few claims
7 are denied on the basis of the pre-1963 interpretation.

8 It is our contention that the Act should be
9 amended so that it is incapable of being interpreted as
10 requiring the existence of an unusual happening in order
11 to establish that an accident occurred. This would
12 probably be accomplished by deletion from the Act of
13 Section 1 (ii) of Article 1.

14 I think I could qualify some of the things
15 that I have said here, sir. If you will turn to page 11
16 of the brief, this deals with the question in paragraph
17 2 and it deals with the basis of being able to support
18 the fact that an accident had occurred and this is in
19 relation to eye witnesses.

20 The Act to provide that claims shall not
21 be denied solely on the grounds that there is insufficient
22 evidence, or absence of eye witnesses.

23 Claims are sometimes denied because of a
24 lack of direct evidence which satisfies the Board that the
25 condition on which the workman makes his claim arose out
26 of and in the course of employment.

27 In other words, the Board is not prepared
28 to accept the explanations of the workman and, in effect,
29 deny claims based on a combination of circumstances which
30 result, without conclusive proof, in an assumption that the



1 accident happened elsewhere than at the place of employ-
2 ment.

3 The arrival at such an assumption is clearly
4 shown in a letter from the Board, dated January 13, 1966,
5 to a claimant who had suffered a hernia condition:

6 "Your claim has been carefully
7 considered having regard for the
8 complete evidence submitted.

9 "Under the terms of the Workmen's
10 Compensation Act, in order for a
11 workman to have entitlement for
12 disability benefits, it must be
13 shown that there was disablement
14 by accident arising out of and
15 during the course of employment.

16 "Although you alleged that on
17 December 1, 1965, you slipped
18 while coming down a set of stairs
19 and at the time felt as if you had
20 strained a muscle in your groin,
21 there were no witnesses to the
22 accident. Complaint was made to
23 your foreman on the same date,
24 however, no history of industrial
25 accident was related at the time.
26 On December 3, 1965, report of your
27 condition was made to your employer's
28 First Aid Department and although
29 you were aware at that time that
30 you had a hernia condition, no



1 history of an industrial accident
2 or unusual occurrence was reported.

3 "In view of the above, your claim
4 has been rejected as it has not
5 been shown that the disability
6 was the result of accident in
7 the employment."

8 The rejection of this claim was confirmed
9 following an explanation made by the workman on the request
10 of the Board. In a letter dated December 14, 1965, the
11 workman informed the Board as follows:

12 "In reply to your letter dated
13 December 10, 1965.

14 "On December 1, 1965 at approximately
15 3 p.m. I slipped coming down a set
16 of stairs from a workmen's platform.
17 At that time it felt as if I had
18 strained a muscle in my groin.

19 About one-half hour later I took
20 severe pains in my groin and went
21 into the Inspection Office and sat
22 down. While there my superior
23 inspection foreman ... entered
24 the office and I explained to
25 him what had happened.

26 "I went home at five o'clock
27 and it being Wednesday and no
28 office hours for doctors, I
29 went to bed. Next morning I
30 had very little pain so I went



1 to work. As the day passed, the
2 pain returned, so that night I
3 went to my family doctor. He
4 informed me I had a hernia and
5 that an operation was required.
6 This I reported to the Personnel
7 Office the next morning."

8 It is clear from the above quoted letters
9 that there were elements of doubt as a result of some
10 conflict in the statements of the workman and the company.
11 The question which arises in such a case is who should be
12 given the benefit of any doubt -- the injured workman whose
13 livelihood is at stake, or the employer who is naturally
14 interested in keeping the accident rate down in his plant
15 because of its effect on the rate of compensation cost
16 which he is assessed.

17 It is a very well established fact that
18 many employers seek to reduce the cost impact through
19 persuading injured workmen not to make a claim for compen-
20 sation, but to continue to draw full wages by remaining at
21 work, even though they are not expected to produce much,
22 if anything at all. In our view, wherever this practice is
23 discovered, the employer should be subject to severe
24 penalty.

25 Reference is made in the letter of the
26 Workmen's Compensation Board dated January 13, 1966, to
27 the absence of eye witnesses, and in view of the conflict-
28 ing statements of the claimant and the employer, we assume
29 that the Board must have based the rejection primarily on
30 this fact.



1 In our view this is entirely wrong and most
2 unfair. Accidents do not wait for the presence of eye
3 witnesses, and their absence should not have any bearing
4 on the disposition of a compensation claim.

5 In cases where there is a conflict of
6 evidence, the determining factor should, in our opinion,
7 be that of whether the accident as described could have
8 happened under the physical conditions of the place of
9 employment.

10 This would require that the onus of proof
11 be on the Board to establish beyond reasonable doubt that
12 an accident did not occur. In our opinion the Act should
13 be very clear and specific in this respect. At present
14 the onus of proof is on the workman.

15 And the other point we deal with is under
16 "Miscellaneous" on page 26. This is just, briefly, a
17 couple of words. It is page 26, under "Miscellaneous".

18 Compensation benefits should be paid from
19 the first day of accident and disability. We understand
20 that this is provided in the Compensation Acts of some
21 provinces.

22 Of course, we have heard that this is a
23 fact in other provinces, and I don't think on this point
24 alone that this should be brought into Ontario, because
25 other provinces have it. I think there is complete
26 justification for the employees in Ontario to receive
27 it from the very first day.

28 I have completed my submissions, sir.
29
30



1 THE COMMISSIONER: I suppose there would
2 be evidence in there involving hernia as well?

3 MR. CARLESS: The point I am suggesting
4 is that sometimes where there is an absence of
5 witnesses or where there doesn't seem to be someone
6 to support the question of the causal relationship
7 therefore it becomes a basis of what is the integrity
8 of the worker and, in our opinion, that is not a good
9 way always to arrive at a conclusion whether it is
10 an accident. It then becomes a question of whether
11 you believe him or whether you don't, it is his
12 integrity that is involved and, at least, in my
13 experience, that is not always the best way to deal
14 with it. The Board has used this as the form of
15 criterion, but we do not agree with it.

16 THE COMMISSIONER: Well, isn't that
17 what the Board is there for?

18 MR. CARLESS: They are there to make a
19 decision.

20 THE COMMISSIONER: And what you are
21 saying is that the onus should be on the Board, there
22 should be some presumption in the worker's favour?

23 MR. CARLESS: Where there is a lack of
24 this type of evidence there should be, because in
25 many shops workers work sometimes alone and this is
26 bad, whether they work where there is lack of presence
27 of other workers and I say myself in dealing with
28 hundreds of claims and a worker in a shop where there
29 are hundreds of workers that in all the experience
30 I have had, I can only say that I have maybe only seen



1 one accident happen where I can say that I have seen
2 it. Very few people are that close to it.

3 MR. ESTEY: Mr. Carless, on this question
4 of waiting period, just to correct the record, some
5 suggestion was made about other provinces having no
6 waiting period. Reference was made to British
7 Columbia but, in fact, what happened in B.C. was that
8 after a long, long hearing of this kind, the Royal
9 Commission decided that it had not been shown that
10 there should be an abolition or reduction in the
11 working period. I presume you refer to the Alberta
12 Statute and Manitoba and the Maritimes?

13 MR. CARLESS: Yes.

14 MR. ESTEY: I wonder if you could help
15 us on two or three things that are raised in your
16 brief. First of all, at the top of page 5, you are
17 talking about the interpretation placed upon the Act
18 by the Board, by reason of some decision which you
19 later referred to and in the third line from the top
20 of the page you say:

21 "Apparently the Board require that it be
22 established to their satisfaction that
23 there be a casual relationship between
24 the employee and the injury".

25 Do you see the part I am referring to?

26 MR. CARLESS: Yes.

27 MR. ESTEY: I take it that your position
28 is that the Board should not take that as a prerequisite
29 to entitlement to compensation, is that right?

30 MR. CARLESS: That is right.



1 MR. ESTEY: In your view, the causal
2 relationship is not an element in establishing
3 their entitlement to benefit?

4 MR. CARLESS: That is to say to use that
5 fully, because many workers are not in the position
6 to be able to prove that.

7 MR. ESTEY: Of being unable to prove
8 that?

9 MR. CARLESS: Sometimes they are unable
10 to prove that through the very fact of lack of
11 supporting evidence.

12 MR. ESTEY: Lack of outside evidence?

13 MR. CARLESS: Yes.

14 MR. ESTEY: If they can't show their
15 causal relationship, they now fail and you say -that
16 shouldn't always be the case?

17 MR. CARLESS: With a lack of eye-witnesses
18 to establish a case.

19 MR. ESTEY: I want to deal with them at
20 one time if I could. I am reading your page 5 and
21 then putting the opposite case to you to find out if
22 what you are saying is that if you can't show a causal
23 relationship that you don't get compensation, that is
24 what you are saying the Board's position is?

25 MR. CARLESS: Well, sir, I have tried to
26 qualify that later on. Where the causal relationship
27 has been not brought into bearing is where the fact
28 is for the specific type of claim that we are talking
29 about. We don't say here, sir, that all claims are
30 judged in this manner, far from it. We don't say that



1 at all, we don't make a blanket statement.

2 MR. ESTEY: I understand you are not
3 saying that. I am trying to find out if you think
4 that that causal relationship should not be put as a
5 test.

6 MR. CARLESS: Well, that is part of our
7 submission, sir, we only have a suggestion. As far
8 as we are concerned it is a suggestion that that be
9 removed from the definition of an accident.

10 MR. ESTEY: That is all I am asking you.
11 I wanted to know if that was your suggestion.

12 MR. CARLESS: That is our suggestion.

13 MR. ESTEY: Then I wonder if you could
14 tell us so we might look further into it, whether the
15 letter which you set out at the bottom of page 5 was
16 a disposition by one of the appeal levels. Do you
17 know whether that was a disposition by an appeal level,
18 the Review Committee or the Appeal Tribunal?

19 MR. CARLESS: I would think that it from
20 the reading of it - now, I can't say this for sure,
21 this arose from the national office, not from our
22 own local ourselves but if you wish to know that I will
23 find that out for you and put it on the record for
24 you, but it would appear to me that this would be a
25 type of letter that sometimes workmen are receiving
26 maybe on the first basis, maybe rejected by the Claims
27 Officer because I think if the whole letter was going
28 to be quoted, I think there would have been some
29 indication that this was a rejection by a Review
30 Committee. I think we would have put this in. I will



1 check it for you.

2 MR. ESTEY: All right, that will be
3 all right. I think you are probably right. Over on
4 page 7, you suggest, you make a suggestion that the
5 interest of the applicant workman might be better
6 served if subsection (2) were removed from the
7 definition of an accident.

8 MR. CARLESS: Yes.

9 MR. ESTEY: I am just troubled there a
10 little bit by that, as to how that would help you.
11 The Act says: "Accident includes wilful and
12 intentional act," and "disablement arising, but it
13 would not include" a chance event occasioned by a
14 physical or natural cause", so haven't you subtracted
15 something from the workman's rights if you carry
16 out the suggestion you make on page 7?

17 MR. CARLESS: Well, I don't think so.
18 Then an accident would be something that arose out
19 of employment. That has helped in some cases but
20 not in all cases.

21 MR. ESTEY: You take one of the things
22 that could have been an accident was the problem
23 of really whether you should have been doing that.

24 MR. CARLESS: The way we look at it then
25 that that would have been much broader, an accident
26 arising out of it would have put a much broader
27 interpretation on it but this is only a suggestion.

28 MR. ESTEY: Then, again, on page 11, I
29 wonder if you can tell us whether the letter dated
30 the 13th of January, 1966 is an initial rejection.



1 It would seem that it is again, but I would like to
2 know that.

3 MR. CARLESS: I can have that confirmed.
4 Right now it seems to be that type of letter.

5 MR. ESTEY: And then the next letter is
6 part of the same sequence, is it? No, it can't be.

7 MR. CARLESS: It is obvious it is a first
8 rejection because the letter here of the workman in
9 the middle of page 12 is the answer to this one. I
10 still think that this is a Claims Officer's reject.

11 MR. ESTEY: So that we can examine this
12 further, could you let us know the file number of
13 this transaction. I have a question which you are
14 certainly not going to be able to answer but which
15 is relevant to the problem and that is, did the
16 medical evidence which was before the Board include
17 any description by the doctor as to the probable
18 cause of the hernia and you can answer that from
19 this letter. I wonder, therefore, if you would let
20 us know what the file number is.

21 MR. CARLESS: Right. Would you like
22 the file number on the other ones or any of the ones
23 we have mentioned?

24 MR. ESTEY: Yes, if you have no objection.

25 MR. CARLESS: Right.

26 THE COMMISSIONER: There was a time when
27 all hernia applications were refused.

28 MR. CARLESS: I know they are pretty
29 difficult even to establish now.

30 THE COMMISSIONER: I know there was a



1 serious medical argument as to whether it could be
2 caused by employment.

3 MR. ESTEY: Finally, you deal with this
4 question of witnesses which you wanted to discuss
5 earlier and I said I would come to it and I have now
6 arrived at it. It turns up on page 13, the third
7 paragraph from the bottom, where you say:

8 "Absence of witnesses should not have any
9 bearing on the disposition of a compen-
10 sation claim".

11 I take it that may be an over-statement
12 arising out of enthusiasm. I don't suppose you really
13 mean that the fact that one claim is supported by a
14 large group of witnesses and another claim has no
15 witnesses at all that they really are on the same
16 basis?

17 MR. CARLESS: Except, sir, on the
18 question of an accident occurring to a worker and,
19 basically, each one of these cases that we have he
20 was not in the vicinity, there was no one there. He
21 could have maybe told somebody afterwards, but there
22 was no one there really at hand, then the question of
23 integrity comes in.

24 MR. ESTEY: Let me take it down to a
25 narrower point. I think what you are really saying,
26 but I want to make sure we get your proposal, is that
27 the absence of a witness should not be fatal to the
28 claim.

29 MR. CARLESS: That is right.

30 MR. ESTEY: That is all you are saying?



1 MR. CARLESS: That is right.

2 MR. ESTEY: That it is possible that a
3 claim could be honoured if there were no witnesses at
4 all, and now you say that in the administration end
5 of the Act that is really not possible?

6 MR. CARLESS: Not in every case, not in
7 every claim. Each one stands on its own merits and
8 there are claims that have been rejected.

9 MR. ESTEY: Dealing with this question
10 of onus of proof, the way that your brief might be
11 read would indicate that you have an adversary system
12 with the claimant on one side and the Board with the
13 money on the other side and the onus on the Board to
14 say that they should not give the money over to the
15 workmen. I don't suppose you really want us to
16 construe it in that fashion?

17 MR. CARLESS: No, we quite realize that
18 this would take in a real change in principle in the
19 Act because it is a fact now that the onus to prove
20 an accident really falls upon the injured worker.
21 There is no denying that.

22 MR. ESTEY: You are saying that is wrong?

23 MR. CARLESS: In many cases, I think
24 that it is because I think in those type of cases
25 where it has become quite unclear and then it becomes
26 a question of well, did it happen, could it happen.
27 That is the question, because if they can't support
28 it then you have to say to yourself, did it really
29 happen or could it really have happened, and we say
30 in those cases that the Board should be in a position



1 to rule on that when one had an accident the onus
2 should then be upon the Board that an accident did
3 not occur. In those cases, it is for the Board to
4 offer some proof that an accident had not occurred
5 at all, rather than say to the workman, "You prove
6 that you have been injured under certain circumstances."

7 MR. ESTEY: You start, I suppose, with
8 the common proposition that there should not be an
9 automatic payment as soon as the claim is filed, you
10 are not suggesting in this brief or now that there
11 should be any automatic recognition of a claim. If
12 that is the case, then what you are saying is that
13 there should be some initial proof by the applicant
14 and after that somebody should have to disprove what
15 he says.

16 MR. CARLESS: Basically, yes.

17 MR. ESTEY: That is what you are saying?

18 MR. CARLESS: Yes.

19 MR. ESTEY: Thank you very much, Mr.
20 Carless.

21 MR. CARLESS: Thank you very much.

22 THE COMMISSIONER: Thank you.

23 Gentlemen, we will adjourn until ten
24 o'clock tomorrow morning.

25 ---At 4:35 P.M., the hearing adjourned until
26 ten A.M. on Thursday, September 29th, 1966.

PROVINCE OF ONTARIO

ROYAL COMMISSION

ON

THE WORKMEN'S COMPENSATION ACT

HEARINGS HELD AT
TORONTO, ONTARIO

VOL. NO.

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IN THE MATTER OF The Public Inquiries
Act, R.S.O. 1960, Ch. 323

- and -

IN THE MATTER OF an inquiry into and
Report Upon The Workmen's Compensation
Act.

Public Hearings

BEFORE: The Honourable Mr. Justice W. A.
McGillivray, Commissioner, at Room
200, 67 Richmond Street West,
Toronto, Ontario, on Thursday,
29th of September, 1966.

APPEARANCES:

W.Z. Estey, Q.C.)	Counsel to the Commission
and)	
H.D. Guthrie)	
G.A. Johnston	Secretary

ALSO PRESENT:

W. Kennedy	For International Union of Mine, Mill & Smelter Workers
W.R. Kerr)	For Workmen's Compensation
G. Black)	Board
E. Kergon)	



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Toronto, Ontario

I N D E X

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8	Treatment Memorandum Doctor/ Hospital and several other documents.	604
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1 At 10:00 a.m. the Hearing commenced.

2 MR. ESTEY: Mr. Chairman, we have gone
3 through the list of briefs submitted by people who are
4 present during the hearings on this second topic. However,
5 it has been indicated to me that prior to reading in the
6 balance of the briefs of those who aren't here on this
7 topic of claims adjudication that some may wish to have
8 a word because of topics or sub-topics which arose after
9 they appeared before the Commission, one of whom is Mr.
10 Kennedy of the Mine, Mill and Smelter Worker's Union.
11 With your permission, Mr. Kennedy would like to address
12 himself briefly to some matters which were raised by Mr.
13 Osler and perhaps others.

14 THE COMMISSIONER: What is the best time
15 to do it? I guess this would be the best time.

16 MR. KENNEDY: Mr. Chairman, I should
17 thank Mr. Estey and yourself for permitting me to come
18 back. However, up until the present time it has been
19 rather difficult to study all the briefs because some of
20 them just came in in the course of this session and it
21 was impossible --

22 THE COMMISSIONER: The International
23 Nickel one was late because of other difficulties.

24 MR. KENNEDY: I trust that this will not
25 be necessary from here on in, as all the briefs, I believe,
26 should be presented by now.

27 However, there are a couple of matters I
28 would like to address myself to and I sincerely hope that
29 I might be of some assistance to the Commission in raising
30 some questions that are perhaps the other side of the



join to positions which would bear on the waiting period.

First of all, it has been suggested that the waiting period might be calculated in terms of working hours rather than days or that it might be the working days rather than the present provision. Now, if we take the question of working hours I want to point out to the Commission that this would be more inequitable than the present system. For example, in the industry with which I am most concerned, the mining industry, they have what we call a continuous shift operation and it would be possible for two men to be injured in the same accident and one would have his qualifying time in in 48 hours and the other would not have his qualifying time in for 5 days. For example, in our industry a man might work on Saturday. He could be injured in the last 5 minutes of the shift on Saturday. Then, he is scheduled to come back to work on Sunday morning. He goes home at 4:00 o'clock and because of a shift change in the continuous operation would come back to work at midnight of the same day. Therefore, he would have two shifts in in one 24 hour period. Then, his third shift would be on the Monday.

The other man, who may be injured in the same accident at quitting time on Saturday, Sunday and Monday may be his regular days off. Therefore, his waiting period would not start until Tuesday and then it would be Tuesday, Wednesday and Thursday. So the one man would qualify on Monday and the other would not qualify until Thursday because of the nature of the injury and the type of shifts that may be worked and, of course, the same thing would apply if it were based on



1 three working days. It seems to me that the most equit-
2 able provision that could be to make it equal for every-
3 body would be if it were reduced to at least a one day
4 waiting period and then these inequities would not arise,
5 the ones that perhaps exist now and the ones that may
6 exist under the submissions that have been made.

7 Now, in respect of back injuries, we heard
8 considerable yesterday on the question of the fact that
9 there should be some causal incident, that something
10 should happen in order to demonstrate that an injury did
11 occur. In the mining industry it is submitted by all
12 concerned that it is a very strenuous industry as well
13 as a hazardous industry and we heard evidence yesterday
14 that the very nature of the industry itself, the nature
15 of the work, could be the cause of or could trigger
16 something in the nature of a back injury.

17 It is a well known fact that in this
18 industry the machinery which a miner is required to work
19 with, while it is true that because of technological
20 advances and new machinery that some of the machinery is
21 easier to handle, it is lighter, but it is not too long
22 ago in the mining industry that the machine which a miner
23 would work with underground could be 160, 175 or 190
24 pounds and that man would be required to lift that,
25 sometimes above his head. No matter how much technological
26 advance there is, if you get a 14 by 12 piece of B.C. fir
27 10 or 12 feet long, no technological advance is going to
28 make that piece of timber lighter. This is the kind of
29 material that our people work with, very often, in very
30 cramped quarter where they just can't have room or perform



1 all the action as they should do by having their back
2 straight and their knees bent for lifting and the advice
3 that is given by posters from the Board and from the
4 companies.

5 So the very nature of the industry itself,
6 in our humble submission, actually wears a man out. It
7 should be remembered that in the industry, as was submit-
8 ted yesterday, the industry itself can contribute to that
9 but I think it should be remembered also, Mr. Commissioner,
10 that in this industry - and it was testified to by Mr.
11 Girdwood - a man must undergo a rather strict medical
12 examination before he is allowed to enter the industry.
13 That is by company doctors or by a doctor where the man
14 is referred to by the company.

15 In addition to that the man must undergo
16 X-ray examination and medical examination by statute that
17 this is a requirement before a man enters the industry
18 and while you will not find it in writing anywhere, it is
19 also a fact that many, many employers have rules and
20 practices of their own that a man must be a certain
21 weight before he can get into the industry and he must
22 be under a certain age or he can't get into the industry.

23 So, to sum it all up, it is, I think, safe
24 to say that only the cream of the crop, from a physical
25 standpoint, are allowed to enter this industry. If, on
26 examination, a man has a chest type which would be
27 susceptible to silicosis, or other industrial diseases,
28 then he is advised that he should not enter this industry
29 and I believe the same thing is true for any man who may
30 have any kind of deformity or any structure that would



1 make him susceptible to back injury.

2 When you have these conditions that,
3 because of the nature of the industry only certain people
4 can get into it and this based primarily on the physical
5 standards, then we have always submitted, Mr. Commissioner,
6 and I do so now, that these should be recognized or I
7 would say that they would fit into the question of an
8 industrial disease that meets the requirements of the
9 Act for silicosis and other industrial diseases.

10 I submit that a man who works in heavy
11 industry - there may be other industries but I am only
12 talking for the mining industry at the moment - because
13 of the very nature of the work a man's back and other
14 organs wear out much, much quicker than they would in
15 many other types of work. I submit it would be just
16 like a door swinging on a hinge. If that door swings
17 long enough on that hinge the hinge is going to wear out
18 and the moment that it wears out I don't think the door
19 has to be swinging when that door might fall. The very
20 pressure it is under may be the very reason for it.

21 I don't know how you can recommend, Mr.
22 Commissioner, but I would humbly submit that in this
23 industry, even if a man did have that first spasm of
24 back trouble at home, he is as much a victim of the
25 industry as if it had happened in a stope, a raise or
26 any other place underground because of the very nature
27 of the industry. I feel that I had to make these points,
28 Mr. Chairman, because it may be in some industries that
29 the work is light, that it would be more or less a
30 natural cause. We feel very strongly that in our industry



1 the very nature of the industry itself wears a man's back
2 out much quicker and, in fact, if it were possible when
3 the man has to meet these rigid medical examinations, has
4 to undergo annual examinations, Xray and physical, that
5 in these cases it is just as much the nature of the
6 industry even if the thing happens at home. I don't know
7 how you are going to do it but we feel he should be
8 compensated for that just as well.

9 THE COMMISSIONER: Of course the difficul-
10 ty in these things is that these things happen to people
11 who don't work and they happen to people who don't do any
12 heavy work at all.

13 MR. KENNEDY: That is true but they don't
14 have to undergo physical examinations before they can do
15 that work, Mr. Commissioner.

16 THE COMMISSIONER: All I was thinking was
17 a certain percentage of those would have had back injury
18 anyway, probably. I understand all you say, that you
19 can't separate them because the nature of their work is
20 such that it induces this. That is what I was asking
21 yesterday

22 MR. ESTEY: I wonder if Mr. Kennedy, while
23 he is here, might help us on two things. One is that
24 somebody yesterday, the United Electrical Workers, of
25 course their workers would not do the physical work you
26 are talking about that your members do. He thought it
27 would be helpful to remove from the definition of "accident"
28 that kind of accident which is described as a chance
29 event occasioned by physical or natural cause. It would
30 seem to me that would not be your submission.



1 MR. KENNEDY: No, I think I mentioned
2 that in my opening remarks the other day: I am making
3 no suggestion of any change in the present provisions.

4 MR. ESTEY: Certainly you would not want
5 to cut down on the definition.

6 MR. KENNEDY: That is right.

7 MR. ESTEY: The other question which I
8 would like to ask if you have any comments on is this:
9 We have heard some statistics which are not complete. I
10 hope the Board will have much further statistics when we
11 get into it. Do you have any explanation for the figures
12 we heard which indicate a rather sharp increase in the
13 number of these back claims, both being made and being
14 approved? Obviously you cannot say much about why they
15 are being approved, but I am just wondering if, from
16 your experience in the mining experience, if you have any
17 explanation as to why there should be a change in pattern
18 for claims of this kind of injury.

19 MR. KENNEDY: I believe I have, Mr.
20 Commissioner. Of course, this is my opinion, but it is
21 based on experience. I believe that one of the reasons
22 for the upsurge in back injuries is because of the
23 nature of the industry and that if we go back to, let us
24 say 1940 to 1945, this was the period in which the Trade
25 Union movement became active and organized most of
26 industry in the country. Since that time, industry
27 generally, and workers in the industry generally, had
28 been protected by seniority provisions in collective
29 agreements. Therefore, because of this, the age in the
30 industry has, I believe, increased. I do not think it is



1 any secret that prior to this you would never find a man
2 over 45 being hired, and very often when men reached
3 that age, they were no longer any use to the industry and
4 were let go. So, in prior years until the workers had
5 some protection, when back injuries and these matters
6 began to affect them, he was no longer in the industry.
7 He had no employer and therefore could make no claims on
8 the Workmen's Compensation Board. I submit that is one
9 reason. I have no statistics but it would seem to me
10 to be a logical explanation.

11 THE COMMISSIONER: That is over the period
12 from 1940 to 1945?

13 MR. KENNEDY: Yes.

14 THE COMMISSIONER: Some of these figures
15 that were rather striking that were given to us yesterday
16 are from 1963 to 1965 and there seems to be almost a
17 doubling of claims for back injuries.

18 MR. KENNEDY: I would say this, Mr.
19 Commissioner, that a man in 1940 who was then 25 or 30
20 years old is now 50 to 55 and the seniority provisions
21 of the agreement keep him on the job where otherwise he
22 might have been gone. I think for the next few years
23 these are not going to decrease. These cases are going
24 to increase.

25 MR. ESTEY: Thank you very much, Mr.
26 Kennedy

27 Yesterday I called the United Steel
28 Workers and they had nobody present. I do not recognize
29 anyone here from the United Steel Workers today.

30 Unless somebody else has some remarks they



1 would care to make on the subjects which have come to
2 light thus far, we will proceed, Mr. Commissioner, to
3 read into the record, those parts of the briefs relating
4 to Item B in our notice of the 14th of September which
5 have not been discussed by representatives of the
6 industries in question. The first one is that of the
7 Automotive Transport Association. They deal with waiting
8 period and other things at page 10. Mr. Guthrie will
9 read that.

10 MR. GUTHRIE: The item is number three on
11 page 10 of the Automotive Transport brief, Mr. Commission-
12 er

13 The Workmen's Compensation Act, in Section
14 3 (1) (a) provides as follows:

15 "Where in any employment in which
16 this part applies, personal injury
17 arising out of and in the course of
18 the employment is caused to a workman,
19 his employer is liable to provide or
20 to pay compensation in the manner
21 and to the extent hereinafter
22 mentioned, except where the injury,
23 (a) does not disable the workman

24 for a period of at least
25 three calendar days from
26 earning full wages at the
27 work at which he was employed;

28 The use of the words, "from earning full wages at the
29 work at which he was employed" supports the view,
30 expressed above, that the purpose of the act is to



1 prevent hardship from loss of earnings occasioned by
2 industrial accidents. This view is in conflict with the
3 use of calendar days rather than working days in deter-
4 mining entitlement to benefit. In our respectful sub-
5 mission, this Section of the Act should be amended to
6 substitute the words "working days" for the words
7 "calendar days" to provide consistency and fairness in
8 accordance with the general principles of the Legislation.
9 This amendment would have the effect of reducing, in some
10 small measure, the costs to employers of Workmen's Com-
11 pensation and would prevent many claims that are picayune
12 in nature.

13 I think that is all -- perhaps the comment
14 at Item 5 on page 12 may be relevant to claims adjudication,
15 Mr. Commissioner. It reads as follows:

16 The comments made above with respect to
17 continuing review of partial and total disability cases
18 also apply to all claims made against the Workmen's
19 Compensation Fund. The vigilance of the investigatory
20 staff should be maintained and increased. Recent
21 statistics show that a comparatively small number of
22 persons are involved in a large proportion of all accid-
23 ents. The suggestion is made that efforts by the
24 Workmen's Compensation Board to identify such "accident
25 prone" persons be continued, and that such persons be
26 referred for appropriate psychological and psychiatric
27 treatment. Employers should be informed of these
28 situations.

29 Thenthe brief of the Ontario Legislative
30 Committee, International Railway Brotherhoods.



1 Beginning on page two of the brief, under
2 the heading "Waiting period":

3 We recommend that Section 3 subsection 1 (a)
4 be amended to read as follows:

5 "If the injury does not disable the workman
6 longer than the day of the accident no
7 compensation other than medical aid shall
8 be paid, but if injury disables the
9 workman longer than the day of the
10 accident, compensation shall be payable
11 from and including the day following
12 the accident".

13 This proposed amendment of the waiting period to one day
14 is in the line with the Workmen's Compensation Acts now
15 in effect in Alberta, Manitoba, Newfoundland, Prince
16 Edward Island and Saskatchewan. At present when an
17 employee is injured causing disablement for three days or
18 less the workman is entitled to medical treatment but
19 without compensation. When the disablement is for four
20 days or more Workmen's Compensation benefits are available
21 to the claimant. (I question that, Mr. Commissioner.)
22 Since the purpose of the Act is to compensate the injured
23 workman for loss of earnings, we contend there is no valid
24 reason why the injured workman should wait longer than
25 one day to qualify for compensation. Under the proposed
26 amendment compensation will not be payable for disability
27 that lasts for one day. However, if disability lasts
28 for a longer period, compensation shall be paid from and
29 including the date after the accident. During the recent
30 hearings held before the Honourable
Mr. Justice Charles W. Tysoe into



1 the Inquiry of the British Columbia Workmen's Compensation
2 Act, Mr. Si gler, counsel for the Board, stated:

3 "The position of the Workmen's
4 Compensation Board is that careful
5 consideration be given to the
6 elimination of the waiting
7 period to eliminate the present
8 period of three days so that
9 administratively the work would
10 be made easier for the Board and
11 be no more costly in the opinion
12 of the Board."

13 We are of the opinion that this proposed
14 amendment would not be an administrative problem and
15 would speed up the handling of claims by avoiding many
16 inquiries and thus would reduce overall costs.

17 THE COMMISSIONER: I do not see how it
18 would reduce inquiries. Inquiries would probably have to
19 be made anyway.

20 MR. GUTHRIE: Yes, I cannot see that
21 either, Mr. Commissioner. I think the brief is in error.
22 It stated that disablement for four days or more brings
23 benefits, on the previous page. I hope we will hear
24 from the Board in this province as to its views on that
25 point.

26 MR. ESTEY: Mr. Commissioner, we have a
27 problem here in connection with the Motor Vehicle
28 Manufacturer's Association brief. They have problems in
29 gathering their Motor Manufacturing members together to
30 appear. They are going to appear on Monday and deal with



1 the first two items which we have discussed up to now.
2 Their brief is largely centred on this phase of the
3 Inquiry.

4 THE COMMISSIONER: Well, it would probably
5 be redundant to do it twice so let us not do it now.

6 MR. ESTEY: Yes.

7 MR. GUTHRIE: Then there is the brief of
8 the Ontario Forest Industries Association. I am reading
9 at page five of that brief. It is a very short submission
10 as to the Waiting Period.

11 The waiting period for benefits was
12 recently reduced to the present three days. It is the
13 Association's opinion that this waiting period should
14 not be reduced further. Experience has shown that the
15 costs of indemnity insurance for sickness and accident
16 rise sharply when waiting periods are shortened.

17 Then on the following page under the
18 heading "Reporting Injuries" ---

19 THE COMMISSIONER: I do not seem to have
20 this brief.

21 MR. GUTHRIE: It is indexed under "O" --
22 it is the Ontario Forest Industry.

23 THE COMMISSIONER: I have it now.

24 MR. GUTHRIE: I have just read the middle
25 paragraph on page five, Mr. Commissioner. Then, on page
26 six ---

27 THE COMMISSIONER: Their contention is
28 that if the waiting period were shortened, it would
29 reduce claims rather than increase them owing to the
30 fact that people would not stretch it out to an extra day



1 or two.

2 MR. GUTHRIE: They say that, in their
3 experience the cost of insurance of this kind has risen
4 sharply when waiting periods are shortened, and they
5 would be opposed to any reduction.

6 THE COMMISSIONER: Oh, "should not be
7 reduced". I thought it said, "should be reduced".

8 MR. GUTHRIE: Then, on page six of that
9 same brief under the heading "Reporting Injuries" ---

10 THE COMMISSIONER: It is unfortunate that
11 they do not support that statement, that costs of sickness
12 and accidents rise sharply when waiting periods are
13 shortened, with evidence.

14 MR. GUTHRIE: Over the page, sir:

15 There has been a growing tendency on the
16 part of employees to report injuries to the Board either
17 directly or through their doctor without notifying their
18 employer. This procedure delays the employer's report
19 to the Board and consequently, the payment of compensation
20 benefits to the injured workman. The Association therefore
21 recommends that the Act be amended to more clearly define
22 the responsibilities of the workman in promptly notifying
23 his employer of the accident.

24 I do not recall there is any provision to
25 that effect at all at the present time. I think that was
26 the first we have heard of that point, sir. There is --
27 I am talking about a duty on the employee to report to
28 his employer.

29 THE COMMISSIONER: That is Section 21 (1)

30 MR. GUTHRIE: But there is no requirement



1 to report to employer, is there?

2 MR. KERR: Yes, it is Section 21.

3 THE COMMISSIONER: It says it should be
4 given as soon as practical.

5 MR. GUTHRIE: Yes, I beg your pardon, I
6 think Subsection 3 of Section 21 does make it clear that
7 it is to the employer and then Subsection 4 says that it
8 should also be given to the Board. I beg your pardon.

9 THE COMMISSIONER: Then, what do they
10 want?

11 MR. GUTHRIE: They say to more clearly
12 define the responsibilities of the workman. I think the
13 responsibility is pretty clearly defined. It may be just
14 a matter of the time limit. They are not very clear on
15 what they recommend in my submission.

16 The next brief is the Ontario Federation
17 of Construction Association at page six, Mr. Commissioner.

18 Waiting Period, Section 3 of Part 1a of
19 the Act under "Compensation" provides for compensation to
20 be paid to a workman except where the injury does not
21 disable the workman for a period of at least three
22 calendar days from earning full wages at the work at
which he was employed.

23 We note that in the inquiry of the
24 1950 report, Mr. Justice Roach recommended that the
25 appropriate section of the Act at that time be
26 amended to read as follows: "... does not disable
27 the workman for the period of at least four
28 working days from earning full wages at the work
29 at which he was employed. 'Working days' shall
30 include all holidays for which the workman if



1 uninjured would be paid without working." In his
2 report Mr. Justice Roach stated that there should
3 be some waiting period, and if the disability
4 extends beyond that period, compensation should
5 be payable from the date of the accident. The
6 question of malingering arose in his report and
7 is one which concerns us as construction employers.
8 The waiting period under the present Act can
9 include two non-working days, that is, Saturday
10 and Sunday, and since the Act is designed to
11 compensate an injured workman for loss of
12 earnings, it is felt that the present section
13 of the Act where the words "calendar days"
14 are used should be changed to "working days",
15 and the three days increased to four working
16 days.

17 Therefore, we recommend that
18 Section 3, Part Ia of the Act should be
19 changed to read as follows: "... does not
20 disable the workman for a period of at
21 least four working days from earning full
22 wages at the work at which he was employed."
23
24
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1 THE COMMISSIONER: If this is designed
2 to compensate the employer for loss of earning it should
3 be changed to this working days. I don't see the rela-
4 tion between these matters. If it is less than the three
5 days he is not going to be compensated for loss of
6 earnings anyway.

7 MR. GUTHRIE: I think the point intended
8 to be made is that the calendar day provision may result
9 in

10 THE COMMISSIONER: I understand the
11 submission in that regard. It really amounts to one
12 working day perhaps instead of three, one day instead of
13 three

14 MR. GUTHRIE: Yes.

15 Going on with the next heading of that
16 brief, Compensation Claims:

17 In surveying the construction industry and
18 contractors' operations, we have continually run up
19 against the complaint of suspicion of fraudulent
20 claims being made and of situations occurring where
21 compensation is claimed and payments being made to
22 workmen who are not actually injured to the extent
23 to which they appear to be and employees
24 suffering from compensable injuries, being away
25 for periods inordinately longer than appears
26 to be warranted by the nature of the injuries.



1 Then it carries on:

2 While we are not in a position to quote
3 statistically what percentage of total accident experience
4 is considered to be fraudulent or inordinately longer
5 compensation agreements are made and defined in quali-
6 tative and quantitative terms, we feel that as a result
7 of the number of complaints made (even with the
8 reluctance to have company records revealed) that the
9 problem is worthy of note by you as Commissioner of
10 this Inquiry.

11 In many instances and in large number
12 of cases back injuries or other sicknesses where
13 compensation is paid, makes it extremely difficult to
14 have clear cut medical recommendations made. The
15 increase in back injuries, for example, seems to have
16 a direct relationship to the completion of a construc-
17 tion project and the approach of winter months. We
18 know that it is rather difficult to prove that some
19 of the claims for compensation that are paid for so-
20 called injuries are not valid claims. These cases are
21 even more elusive than to other concerns such as
22 manufacturing. Management of manufacturing, generally,
23 have a complete accident record of employees since
24 the employees are permanent and generally have con-
25 siderable seniority. Also the employer in manufacturing,
26 aided with the employee's complete accident record
27 is better able to pinpoint possible, fraudulent cases
28 and make representations to the Workmen's Compensation
29 Board accordingly.

30 However, in the construction industry
as outlines in Appendix A, the construction employer
in constantly hiring employees who have just finished



1 working for a different contractor in the area there is
2 a great lack in that the employer does not have the total
3 picture of the man's injury record.

4 It seems that in such a situation the
5 only agency which can see the picture as a whole is the
6 agency which is processing or reviewing the employee's
7 file at the Workmen's Compensation Board. Certainly, it
8 would seem invaluable if a system were instituted whereby
9 an employee who had a record of compensable injuries,
10 carried with him a medical certificate or book. The
11 employer could then provide suitable work and the extra
12 supervision required to prevent further injuries

13 THE COMMISSIONER: Also enable the
14 employer to refuse to employ him.

15 MR. GUTHRIE: Like the used-car pedigrees.

16 To offset any feeling that this would
17 work against the interests of the employee in obtaining
18 work it is respectfully suggested that should an injury
19 recur, consideration be given to the proper assessment
20 of the injury against the records of the employer where
21 the original injury occurred. There have been reports of
22 situations occurring where employees suffering from
23 compensable injuries have been away for periods longer
24 than appear to be warranted by the nature of the injuries.
25 While it is agreed that the Act provides that the
26 employer where he is not satisfied can insist on a
27 medical examination of the workman by a company appointed
28 doctor, it is felt that this arrangement is not too
29 satisfactory and that some alternative procedure is
30 called for which will eliminate unnecessarily extended



1 time off work.

2 A further situation which occurs is when
3 an employee now working for another company will claim
4 compensation in respect of an injury which occurred
5 during previous employment and for which the original
6 employer is assessed. What steps are taken to ensure
7 that the subsequent complaints are thoroughly checked
8 where reasonable doubt may exist before further compensa-
9 tion is paid? Is there any record which indicates that
10 an individual is the subject of numerous claims for
11 compensation? Perhaps Mr. Kerr might note those questions.
12 The may be of some interest.

13 It is respectfully suggested that if it
14 can be established that compensation has been paid on
15 the basis of false claims appropriate penalties should
16 be imposed on the claimant and we feel that the Workmen's
17 Compensation Act should adequately provide for penalties
18 in such instances.

19 We wish to quote for your information,
20 Section 21, Subsection 1 of the Act, as follows:

21 "Subject to Subsection 5,
22 compensation or medical aid is
23 not payable unless notice of the
24 accident is given as soon as
25 practicable after the happening
26 of it and before the workman
27 has voluntarily left the employment
28 in which he was injured and unless
29 the claim for compensation or medical
30 aid is made within six months from



1 happening of the accident or in
2 case of death within six months
3 from the time of death."

4 Subsection 5 says:

5 "Failure to give the prescribed
6 notice or to make such claim or
7 any defect or inaccuracy in a
8 notice does not bar the right
9 to compensation if, in the
10 opinion of the Board the employer
11 was not prejudiced thereby or,
12 where the compensation is payable
13 out of the accident fund if the
14 Board is of opinion that the
15 claim for compensation is a just
16 one and ought to be allowed."

17 This section of the Act is ambiguous in
18 that it cancels out the importance and intent of the
19 original concept of reporting accidents. In many
20 instances the employer's first knowledge of the accident
21 will occur when he receives notification from the Board
22 that a former workman has applied for Workmen's Compensa-
23 tion and which will be assessed against his company and
24 he is asked by the Board whether he intends to contest
25 the workman's claim. To do this the employer is required
26 to fill in the Workmen's Compensation Board form 7,
27 Employer's Report of Accident or Industrial Disease. The
28 construction employer has great difficulty after a time
29 lapse in researching and finding out if, in fact, an
30 accident did occur and all too often the time element and



mobility and replacement of the work force

is available and, consequently, no contri-

to the injured workman's claim.

This immediately raises a suspicion as to whether, in fact, an accident did occur. It could be that the injury, particularly a back injury might have occurred in the evening during pleasurable pursuits outside of working hours such as pushing a car to start it or digging in the back yard. It would appear that in view of the trend of the shorter working week and more leisure time, the incidence of injury occurring during non working hours should be investigated and procedures set up to ensure that disabilities arising during the course of leisure activities be distinctly defined and separated from occupational disabilities.

The encouragement of such claims without reporting accidents --

THE COMMISSIONER: It might be difficult. I don't know how the Board could investigate the injuries occurring during off working hours, non-working hours.

MR. GUTHRIE: The encouragement of such claims without reporting accidents to an employer is spelled out in the Workmen's Compensation Act to the detriment of the construction management as follows

Paragraph 2 of Section 3 provides

"Where the accident arose out of employment unless the contrary is shown, it shall be presumed that it occurred in the course of employment



1 and where the accident occurred
2 in the course of employment unless
3 the contrary is shown, it shall be
4 presumed that it arose out of the
5 employment."

6 We strongly recommend that this presumption
7 should immediately be removed from that section of the
8 Act and be replaced with wording which will provide that
9 it is incumbent upon the workman to report the accident
10 to his employer as soon as practicable after its occurrence
11 and before his compensation claim is even considered.
12 Also form 7 of the Workmen's Compensation Board should
13 provide for more information from the employer with
14 respect to the accident, the report of the injured employee
15 and the names of witnesses to the event if any.

16 It is our feeling that form 7 as presently
17 constituted does not possibly provide sufficient informa-
18 tion to the Board to consider a claim on the basis of
19 information presently provided by management. We feel that
20 in the light of the foregoing this is a very necessary
21 requirement for the protection of construction employers.
22 We believe that there should be a medical certificate,
23 record or book provided employees by the Board which could
24 alert the contractors regarding accident prone employees
25 who are having continuous injuries and accidents that
26 indicate a specific pattern. We feel that this would
27 help prevent accidents in that the employer could provide
28 sharper supervision in such cases. Also the matter would
29 be greatly assisted if the appeal procedure were amended
30 as recommended earlier in this brief and provide the



1 machinery whereby an employer could lodge a complaint
2 after which an independent committee could render a more
3 objective decision.

4 I think the rest is about appeals and I
5 believe that is all on that long brief.

6 Then the brief of the Retail Council of
7 Canada.

8 THE COMMISSIONER: I think they are in
9 that position in industry because they have these jobs
10 that come and go and they pick up labour all the time
11 I don't know how the whole Act can be changed to take
12 care of an industry.

13 MR. GUTHRIE: Well, their principal
14 point at the end seems to be that a claim could not be
15 considered until after notice had been given to the
16 employer but it still could put them in a difficult
17 position if a man has left the employment before he makes
18 his claim.

19 The brief of the Retail Council of
20 Canada deals at page 4 with Reports of Accidents and the
21 provisions of Section 115.

22 Section 115: Reports of Accidents.

23 12. This section of the Act obliges
24 employers to report to the Board within three days of an
25 accident, the occurrence of the accident and full details
26 of its occurrence. We understand that a digest of this
27 information is later relayed by the Board to the approp-
28 riate Safety Association or Associations. It is our
29 further understanding that the information actually
30 reported to the Safety Association is often not



1 sufficiently complete to enable the Association to take
2 appropriate action in regard to the accident. The Safety
3 Association may, for instance, wish to make a change in
4 its recommendations for execution of the particular
5 activity which caused the accident, or may wish to develop
6 statistics related to the occurrence of this and other
7 kindred accidents. It is our recommendation that the
8 report form be so designed that that section of it which
9 details the circumstances of the accident be reproduced
10 in its entirety and be forwarded to the appropriate
11 Safety Association.

12 That, perhaps, might better be taken up
13 again when we come to accident prevention, Mr. Commissioner
14 The heading caught us as having some bearing but it is
15 not closely related to what we have been discussing

16 Then skipping back, alphabetically, Mr
17 Commissioner, we have passed the brief of the Ontario
18 Federation of Labour which deals with these matters,
19 page 15 of the brief dealing with Section 3 of the Act

20 It is our contention that there is no
21 longer any necessity for a waiting period before a
22 workman is entitled to the payment of compensation. The
23 present Act, Section 3(1) (a), provides for three
24 calendar days as a so-called waiting period. In many
25 cases, this only represents one actual working day. B.
26 providing entitlement to the workman for compensation
27 payments beginning with the first shift following his
28 compensable accident, the handling of claims could be
29 speeded up; many enquiries could be avoided and the
30 overall cost in essence could be reduced. In addition



1 to this, there is no justifiable reason why a workman
2 should lose three full days' wages, as at present, before
3 being compensated for injuries resulting from an accident
4 which occurred through no fault of his own.

5 THE COMMISSIONER: It was understood,
6 "through no fault of his own" that somebody raised a
7 question about, that compensation does not necessarily
8 follow. If it was not through his own fault he gets
9 compensation anyway.

10 MR. GUTHRIE: The point is further dealt
11 with at page 23 of the brief, sir.

12 Section 51:

13 Section 51 of the Workmen's Compensation
14 Act provides for medical aid for an injured workman. This
15 Section also states that a workman is entitled to medical
16 aid had he been disabled for at least three days.

17 MR. ESTEY: This section of the brief is
18 wrong, I think Mr. Commissioner. They go on to ask that
19 three days be eliminated from Section 51 but I think
20 they have misread the Section.

21 MR. GUTHRIE: As I understand it there
22 is no waiting period for medical aid.

23 THE COMMISSIONER: No.

24 MR. ESTEY: Shall I read the rest of
25 the submission, in any event?

26 THE COMMISSIONER: No, I would not
27 bother. The matter about disqualification of practitioner comes
28 in.
29 No, I think the matter about disqualification of practitioner
30 at Accident.



1 MR. GUTHRIE: At page 26 there is a
2 reference to investigations.

3 Local Investigations:

4 In numerous compensation cases, the Board
5 finds that a local investigation is necessary to obtain
6 further information on the claim made by the injured
7 workman. It is our contention that the investigator
8 should be instructed to inform the claimant that he has a
9 right to be represented at such an investigation.

10 On the other page under the heading
11 Section 21, page 27:

12 Section 21:

13 Section 21 of the Regulations provide
14 that an employer shall keep a record of injuries to the
15 workman and the first aid treatment applied. However,
16 we find that in many cases such records are not kept
17 and often difficulties arise to establish the fact that
18 a workman has reported an accident or injury to the
19 first aid department.

20 We therefore, believe that the Workmen's
21 Compensation Board should exercise a stricter control
22 over the recording of non-compensable injuries, which
23 only need first aid treatment.

24 That is all on that brief, I think, that
25 appears on these points, Mr. Commissioner.

26 I think lastly there is the brief of
27 the United Steel Workers of America, at page 2, dealing
28 with Elimination of Waiting Period:

29 It is respectfully submitted that the
30 waiting period of three days, now provided for in sec. 3



1 of the Act, should be reduced to the day of accident.
2 Several other provinces have reduced the waiting period
3 under their Acts to one day, namely, Alberta, Manitoba,
4 Newfoundland, Prince Edward Island and Saskatchewan.
5 These provinces have, for some years now, successfully
6 operated on this basis without any of the serious conse-
7 quences which had been predicted if the waiting period
8 were so reduced.

9 In the 1950 Report on The Workmen's
10 Compensation Act, by the Honourable Mr. Justice W.D.Roach,
11 some of the arguments for retaining what was at that time
12 a seven-day waiting period were stated at page 19 of the
13 Report. They included the contention "that the expense
14 of administering compensation to those whose injuries
15 resulted in disability which lasted less than seven days
16 would be out of all proportion to the benefits received
17 by them". The Commissioner stated this to be his primary
18 reason for not recommending a reduction of the waiting
19 period below four working days.

20 The costs of administration in those
21 provinces listed above, which have adopted a one-day
22 waiting period, cannot be compared directly with the
23 costs of administration in Ontario because the general
24 heading "Administration Costs" includes different things
25 in the different provinces. However, one measure of the
26 effect of a reduction of the waiting period on adminis-
27 tration costs can be obtained by a comparison of the
28 administration costs of the Ontario Board before and
29 after 1951 when the waiting period was reduced from seven
30 to five days (Stat. of Ont., 1951, c. 95. s. 1) and



1 before and after 1963 when the waiting period was reduced
2 from five to three days (Stat. of Ont., 1962-63, c. 145,
3 s. 2). The costs of administration of the Ontario Board
4 in the relevant years are as follows:

5	1950	9.8%	(1950 Annual Report, pp. 6,8)
6	1951	9.7%	(1951 " " pp. 6,8)
7	1952	8.3%	(1952 " " pp. 6,9)
8	1962	7.5%	(1962 " " p. 2)
9	1963	7.2%	(1963 " " p. 2)
10	1964	6.9%	(1964 " " p. 2)

11 THE COMMISSIONER: I suppose next week
12 I hope Mr. Guthrie will keep those figures there and get
13 some elucidation from Mr. MacDonald of the Board when he
14 comes here. These are administrative costs and they do
15 not relate to any additional pension costs or compensa-
16 tion costs. Also, I wonder how accurate the percentage
17 basis is in view of the other things such as the increased
18 wage scale and one thing and another.

19 MR. GUTHRIE: It would seem to me that
20 there may be so many factors affecting costs that we
21 would have to know before the figures could be accepted
22 as proving the point.

23 THE COMMISSIONER: Well, they are
24 interesting, nonetheless.

25 MR. GUTHRIE: I think Mr. MacDonald is
26 here and has noted that point.

27 The brief goes on to say:

28 It would appear from the above figures that
29 the contention that the reduced period would in itself
30 result in greatly increased administration costs has not



1 | been borne out by the experience of the Ontario Board
2 | itself.

3 | I think that completes the reading of
4 | briefs on these matters that were not submitted by the
5 | parties themselves, Mr. Commissioner.

6 | MR. ESTEY: Mr. Kerr is here on behalf
7 | of the Board, Mr. Commissioner, to deal with those various
8 | items that have come up in the discussions on claims
9 | adjudication. Perhaps we will call Mr. Kerr now.

10 | MR. KERR: My name is W. Kerr and I am
11 | accompanied this morning by Mr. George Black, Coordinator
12 | of Claims Services and Mr. E. Kergon, Chief Claims
13 | Officer.

14 | Before proceeding to the subjects this
15 | morning I have been asked to present on behalf of Mr.
16 | Pool, as requested by Mr. Estey, further submissions
17 | concerning advice on the appeal tribunal, and if I may
18 | be permitted, I would like to do that now.

19 | THE COMMISSIONER: For the record, what
20 | is your post?

21 | MR. KERR: My position is Director of
22 | Claims and Rehabilitation Services.

23 | MR. ESTEY: Those documents, Mr. Kerr,
24 | are really a set of documents under Exhibit 6, but they
25 | are complete and I take it they show the first letter of
26 | rejection and subsequent notices, whereas in our earlier
27 | conversations with Mr. Poole, two of those letters were
28 | missing.

29 | MR. KERR: That is correct.

30 | MR. ESTEY: You have now completed the



1 correspondence cycle, and therefore, Mr. Commissioner, if
2 we may, perhaps we could identify that as Exhibit 6 along
3 with the documents which Mr. Poole presented.

4 THE COMMISSIONER: I think it will be
5 Exhibit 7.

6 MR. ESTEY: But these are the same docu-
7 ments except that two have been added.

8 THE COMMISSIONER: This was Exhibit 6,
9 was it?

10 MR. ESTEY: Yes, Mr. Commissioner.

11 THE COMMISSIONER: And it is just sub-
12 stituted for Exhibit 6, as filed?

13 MR. ESTEY: Yes, because Exhibit 6 as
14 given to us before was not complete. This is the complete
15 set of correspondence.

16 MR. KERR: Mr. Commissioner, I will cover
17 the topics of Claims Adjudication at the Claims Department
18 level, accidents arising out of and in the course of
19 employment, the waiting period and the reporting of
20 accidents.

21 Claims Adjudication at the Claims Depart-
22 ment Level

23 Purpose

24 It is the responsibility of the Claims
25 Department to adjudicate initially all claims within the
26 terms of the Act. It is the duty of every Claims Officer
27 at every level within the Department to deal with each
28 claim as an expert.

29 In the performance of his duty the Claims
30 Officer may use every means possible such as telephone,



1 teletype and telex to speed the flow of information and
2 to arrive at a just, considered decision.

3 The workman is advised of any delay in
4 receiving adequate information about his claim and prompt
5 steps are taken by the adjudicator to expedite matters.

6 Organization

7 The Claims Adjudication branch consists of
8 twelve sections designed to handle specific types of
9 claims. Ten compensation sections are responsible for
10 adjudicating lost time accidents. Determined by the last
11 digit of the claim number, each section deals with one-
12 tenth of the total volume. During 1965 organizational
13 changes were made in the Claims Department to cope with
14 the ever-increasing claims volume.

15 Assistance to Adjudicator

16 Various ancillary claims services have
17 been removed from the adjudicators to permit claims
18 officers to devote full time to their decision-making
19 functions. The newly created Claims Service Branch is now
20 responsible for supporting services in the payment of
21 claims which include, among other things, computing
22 payments and answering telephone inquiries

23 Fatal Claims

24 The Fatal and Chest Section is responsible
25 for decisions on Fatal Claims, Silicosis, Tuberculosis,
26 Radiation and Cancer claims.

27 Claims for Medical Aid Only

28 The Medical Aid Claims Section is respon-
29 sible for decisions concerning claims in which there is
30 no compensable lost time but where there are payments



1 to be made for medical and hospital bills. The processing
2 of these accounts is being transferred to the Medical Aid
3 Department.

4 Records Department

5 The Records Department, in addition to other
6 recording functions, is responsible for recording accidents
7 as they are reported, handling incoming and outgoing mail
8 and controlling the movement of claim files. Between
9 1500 and 1650 new accidents are reported to the Board
10 daily. Approximately 24,000 pieces of mail are received
11 and dispatched daily.

12 Priority of Decision-Making

13 Compensation claims involving payment of
14 compensation are more urgent than claims for medical aid
15 only because they affect the family income. In the past,
16 the same Claims Section considered both types of claims
17 which slowed the adjudication of claims for compensation.
18 Under the revised system, claims for medical aid only are
19 diverted to the Medical Aid Claims Section to allow the
20 Claims Officer in the Compensation Sections to devote
21 full time to adjudicating claims. This change, along
22 with improvements in records and the ancillary services,
23 has expedited compensation payments to injured workmen.

24 When new lost time accidents are reported,
25 the necessary forms are sent out within three days in
26 over 90% of the cases.

27 THE COMMISSIONER: These forms are not
28 available in the hands of employers. They control the
29 forms and they only go out when the claim is being made?

30 MR. KERR: No, the employers have a



1 supply of the employer's report of accident, form 7, but
2 they must send a report to the workman and ask him to
3 complete the workman's report of accident in these compen-
4 sation claims

5 THE COMMISSIONER: The employer has not
6 got a copy of the workman's report of accident forms?

7 MR. KERR: That is right. We send that
8 directly to the workman. The employer does not have a
9 supply of the workman's report of accident.

10 In February, 1966, a survey showing the
11 number of days from the date the Board received notice
12 of accident to the date of the initial payment revealed
13 that 79% of the claims were paid within six to ten working
14 days. A similar survey in June 1966 indicated that
15 initial payment was made in 90% of the claims within six
16 to ten working days.

17 Service Operations

18 A new Service Department in Claims, co-
19 ordinates all service activities on a pool basis, and
20 greater flexibility is achieved.

21 Decision-Making Responsibility

22 The principle of allowing adjudication to
23 be delegated to independent decision-makers at various
24 levels makes the individual Claims Officer responsible
25 for his decisions. Training programs have been established
26 to develop the skills and abilities of junior Claims
27 Officers so that they can assume greater responsibility.
28 Supervisors skilled in adjudication maintain close
29 quality control by checking, by instructing and by being
30 available for consultation.



1 Medical Advisers

2 Under the new system a Medical Officer is
3 located in each Claims Section and is readily available
4 to give opinions on the medical aspects of the case to
5 Claims Officers which speeds the decision-making.

6 Medical Aid Claims Section

7 Of all accidents reported, 65% require
8 medical aid only.

9 There is no compensable lost time.

10 By handling this volume of relatively
11 minor claims in a special unit the operation has been
12 improved and claims are dealt with effectively and quickly
13 at minimum cost.

14 Investigations

15 Investigation by a Claims Investigator is
16 sometimes the only method of establishing the facts clearly
17 before arriving at a decision. Reasons for investigation
18 are clearly defined by the claims adjudicator to guide
19 the investigator. Immediately the investigation is
20 completed, the claim files are returned to Head Office
21 for the decision-maker. The investigation procedure has
22 now been revised so that claims are usually investigated
23 within a week of the adjudicator's request. If the
24 workman requests representation during his interview, this
25 is permitted. In some cases, to avoid delays and reduce
26 administrative costs, injured workmen are asked to call
27 at the Board's office for interview and may be compensated
28 accordingly.

29 Rejected Claims

30 In the former system, a rejected claim was



1 automatically scrutinized, not by the decision-maker's
2 supervisor, but by another body of three called a claims
3 review committee. In effect this was a surveillance of
4 the case without the injured workman being able to make
5 representation. Now the adjudicator, with the approval
6 of his supervisor rejects a case on the evidence. The
7 decision is written to the workman with a simultaneous
8 notice that he has the right of appeal to an independent
9 Review Committee. Thus the decision-maker is responsible
10 for his decisions and the workman has full and immediate
11 disclosure of his rights.

12 May I now go on to accidents arising out
13 of and in the course of employment?

14 THE COMMISSIONER: Go back to Investigations
15 by a claims investigator: in what percentage of the claims
16 do you make this investigation?

17 MR. KERR: It would be about one per cent
18 of all claims reported to the Board which would be inves-
19 tigated, as was stated by other persons giving information.
20 Because of our large volume, we try and are successful in
21 most cases, to obtain the information that is required
22 for adjudication by mail. To investigate a terrific
23 large number would result in a delaying process and,
24 therefore we only investigate cases where they cannot
25 get the facts. It is a relatively small number.

26 May I proceed, Mr. Estey?

27 MR. ESTEY: Yes

28 THE COMMISSIONER: In those cases, then,
29 you depend upon the report of the employer and the report
30 of the workman and the medical evidence



1 MR. KERR: Well, those are the three basic
2 reports that we have.

3 THE COMMISSIONER: I suppose he might
4 give you, as well, some evidence of eye witnesses or
5 something, and that is sent in by mail?

6 MR. KERR: That is right, sir. In the
7 workman's report of accident, he is asked questions, "To
8 whom did you report the accident? Please give the name
9 of witnesses or persons to whom you complained" and this
10 information is usually contained in his workman's report
11 of accident which gives us the basis on which we can
12 accept the claim or, if necessary, make further inquiry
13 to substantiate the evidence that is being submitted.

14 Accidents arising out of and in the course
15 of employment.

16 Section 3 of the Workmen's Compensation
17 Act provides benefits for personal injury by accident
18 arising out of and in the course of employment.

19 What is meant by these two terms?

20 Arising out of Employment

21 A workman is protected while performing
22 the duties he is employed to do and what is incidental
23 thereto.

24 He is also protected if he acts reasonably
25 and in good faith doing what he believes is in the interest
26 of his employer. If he can justify an act as necessary
27 or due to emergency, he has entitlement if injured.

28 Workmen who participate in larking, fooling or quarrell-
29 ing are not compensated, but the innocent victim of such
30 acts would be protected.



1 In the Course of Employment

2 A workman is generally considered to be
3 in the course of employment while on his employer's
4 premises for the purpose of employment. Travelling to
5 and from employment is generally excluded, although if a
6 workman is injured while going to or from work in a con-
7 veyance under the control and supervision of the employer,
8 he may be considered in the course of his employment.
9 Similarly, those who travel in the employer's business
10 are protected while travelling.

11 The amendment modifying the definition of
12 accident was effected April the 3rd, 1963. The circum-
13 stances prior to and subsequent to this amendment described
14 definition of accident:

15 History - Prior to April 3, 1963

16 Section 1 (1) (a) of the Act read as
17 follows:

18 "1. -- (1) In this Act,
19 (a) 'accident' includes a wilful and
20 an intentional act, not being the
21 act of the workman, and a fortuitous
22 event occasioned by a physical or
23 natural cause."

24 Ovious traumatic injuries due to accident,
25 such as a fall, cut, or blow, could be adjudicated with-
26 out difficulty. Adjudication of a strain or sprain type
27 of injury presented problems. The following directive,
28 dated December 13th, 1934, was issued by the Board as a
29 guide to the adjudicators in the handling of this latter
30 group



"Where some specific strain or incident occurs while a workman is at work under such circumstances as make it appear that an injury has taken place to muscles, tendons or ligaments, thereby causing disability, even in the absence of what is commonly regarded as an accident or a fortuitous event, this may be assumed to be an accident and compensation allowed."

Claims were adjudicated in accordance with this directive until the amendment of April 3, 1963.
From April 3, 1963 to date

The Act was amended to include "Disablement arising out of and in the course of employment" as accident and the amendment applied to accidents which occurred on and after April 3, 1963.

Section 1 (1) (a) now reads as follows:-

"1 — (1) In this Act,

(a) 'accident' includes,

(i) a wilful and intentional act, not being the act of the workman.

(ii) a chance event occasioned by a physical or natural cause, and

(iii) disablement arising out of and in the course of employment."

Interpretation

For the adjudication of claims which are considered under the disablement clause, the following



1 Board Order serves as a guide:

2 "Entitlement under the amending act
3 applying to accidents happening on
4 and after the 3rd day of April, 1963,
5 which includes under the definition
6 of accident 'disablement arising
7 out of and in the course of employment'
8 requires that the disablement which the
9 workman suffers must have some causal
10 relationship with the work being
11 performed, that is, it is not suffi-
12 cient that the disablement comes on
13 during work but rather there must
14 be something about the work which
15 can be considered to have caused
16 the disablement to come on, such
17 as strenuous work, awkward position,
18 unaccustomed strain, or even a
19 movement arising out of the work
20 which is reasonable to consider
21 has caused the disablement."

22 Criteria for Allowance of Claims

23 In the adjudication of claims, the Claims
24 Department must establish the following points:

25 (1) that the employer's business is
26 covered by the Act;

27 (2) that the injured person is a workman
28 within the meaning of the Act;

29 (3) that the accident did occur as re-
30 ported and did arise out of and in the course of



1 employment; or that the disease is an industrial disease
2 or one peculiar to or characteristic of a particular
3 industrial process, trade, or occupation;

4 (4) that the disability is the result of
5 the accident reported.

6 In most instances the first three points
7 can be established without delay from reports received.
8 If the accident is well defined, point four presents no
9 particular problem although it may be necessary for the
10 Claims Officers to obtain a medical opinion regarding
11 the causal relationship between the condition diagnosed
12 and the accident reported.

13 If the history is not well defined, the
14 Claims Officer must obtain further evidence concerning
15 exactly what the workman was doing when the injury
16 occurred. In some cases a Claims Investigator is sent to
17 obtain detailed information. The Claims Officer must then
18 determine whether there is a causal relationship between
19 the disability and the circumstances to which it is
20 attributed.

21 Many factors are considered in determining
22 the relationship. When was pain first experienced? Did
23 he complain? How soon did he report the accident to his
24 employer? When did he have to stop working? Was medical
25 attention sought promptly? Were there witnesses? Is the
26 employer satisfied that there is a reasonable explanation?
27 Is the workman's report of accident reasonable? And, on
28 occasions, is there a language problem?

29 If the circumstances of the claim as
30 established by report or enquiry meet the criteria, the



claim is allowed by the Claims Department. If it has to be rejected on the evidence, the decision and advice that he may appeal to the Review Committee is sent immediately.

THE COMMISSIONER: I think perhaps we will adjourn here for ten minutes.

Short recess.

MR. KERR: Mr. Commissioner, with your permission, I will continue with the waiting period and the reporting of accidents.

THE COMMISSIONER: Is it your desire, Mr. Estey, to have him complete this all or do you want to examine on what you have got?

MR. ESTEY: I think it might be more convenient to do it all at the one time, Mr. Commissioner.

THE COMMISSIONER: Very well, waiting period.

MR. KERR: Waiting Period, Section 3, subsection (1), subsection (a).

Origins of Waiting Period

In Workmen's Compensation legislation, it has been a traditional philosophy that there should be a waiting period before entitlement to compensation begins. This has been considered as the workman's share of the burden of industrial accident.

The original Workmen's Compensation Act of Ontario provided for seven day waiting period. By amendment effective January 1, 1952 the waiting period was reduced to five days, and a further amendment effective April 3, 1963, reduced it to three days.

1964 Amendment



1 In administering the Act throughout the
2 years the wording "days" was always interpreted by the
3 Board as being calendar days. Thus, entitlement was
4 based on the number of calendar days which the workman
5 was disabled from earning full wages. In 1964 the term
6 was clarified in the Act by the insertion of the word
7 "calendar" before the word "days".

8 THE COMMISSIONER: At the time of Mr.
9 Justice Roach's report, I had the impression that he
10 talked about working days but you say that it has never
11 been the policy of the Board to consider it as working days,
12 it has always been calendar days?

13 MR. KERR: It has always been interpreted
14 as calendar days, sir, from the very beginning.

15 THE COMMISSIONER: I see.

16 MR. KERR:

17 Disabled from Earning Full Wages

18 Section 3 (1) provides for compensation
19 payments except where the injury:

20 "(a) does not disable the workman
21 for a period of at least three
22 calendar days from earning full
23 wages at the work in which he
24 was employed."

25 The words "from earning full wages" are
26 a clear indication that any day on which the workman is
27 disabled from earning full wages must be counted as part
28 of the three day waiting period. It is not required that
29 the workman lose the entire day to qualify, merely that
30 his wages for that day be less than full wages because



1 of his injury. It is not necessary that he lose any time
2 from work at all provided his wages are less because of
3 his disability.

4 Payment of Compensation

5 While calendar days are used to determine
6 the period, payment of compensation relates to
7 loss of earning capacity. Because of this compensation
8 is only paid for those days or parts of days on which the
9 workman would otherwise have worked or on which his
10 earnings were reduced because of partial disability. A
11 workman whose days off are Saturday and Sunday would not
12 be compensated for them. Compensation payments are made
13 when there is medical evidence confirming disability.

14 REPORTING ACCIDENTS

15 Reports to the Board

16 It is the workman's responsibility to
17 establish his claim. Section 21 of the Workmen's Compensa-
18 tion Act requires the workman to give notice of accident
19 to the employer and to the Board as soon as practicable.
20 Subsection 5 of Section 21 gives the Board the authority
21 to accept a claim where there has been failure to give the
22 prescribed notice providing the claim is a just one and
23 may be allowed.

24 Section 21 has already been read this
25 morning, Mr. Commissioner, so I will not read it again.

26 Section 115 of the Act requires the
27 employer to give notice of accident to the Board within
28 three days of the happening. Subsections 2 and 3 of
29 Section 115 provide for penalties if the employer fails
30 to make the necessary reports to the Board since this



1 may work a hardship on the workman. It is recognized that
2 in some instances the employer cannot report within three
3 days where the workman does not report his accident or
4 disability to the employer.

5 Delay in Reporting

6 In few cases is notice of accident not
7 given within the prescribed time. If the Board is satis-
8 fied that the evidence confirms that the accident happened
9 and that the disability is related to it, delay in re-
10 porting would not be a bar. If on detailed enquiry the
11 accident cannot be established and there was delay of
12 more than six months in reporting, then the claim could
13 be rejected under Section 21.

14 Board Enquiries re Delay

15 A workman jeopardizes his claim if he does
16 not report his accident promptly. It is more difficult
17 for him to establish the details at a later date. Where
18 delay in reporting is involved which create difficulty
19 in granting benefits, the Board makes detailed enquiries
20 or investigation to assist the workman to substantiate
21 his claim. If the enquiry does not produce supporting
22 information, the claim would be considered on the evidence
23 already submitted. The Board would consider factors such
24 as the type of disability, his length of employment, the
25 details of his history of onset of disability and reasons
26 for delay in reporting, and whether or not the circum-
27 stances were reasonable. Each claim is considered
28 individually on the true merits and justice of the case.

29 Agreement to Waive Benefits Void

30 Section 17 of the Act prohibits any



1 agreement between a workman and his employer under which
2 the workman agrees to forego the benefits of the Act.

3 MR. ESTEY: Mr. Kerr, your brief seems to
4 fall into three parts and it perhaps will facilitate your
5 answers if I abide by them. The first one deals with
6 the mechanics of the actual filing of the claims and you
7 have described to the Commissioner how this has been
8 speeded up by routing the medical claims down one pipe
9 line and everything else down another pipe line. Now,
10 why is it that when speed is one of the prime considera-
11 tions in your administration, that you don't have the
12 forms for the workman's report in the employer's premises?

13 MR. KERR: Well, we do stockpile forms
14 for the employer, of course, to submit his report of
15 accident. We also have in the employer's hands - and
16 perhaps at this stage, I should introduce this, Mr. Estey -
17 a treatment memorandum to the doctor or hospital, which
18 is to be completed by the employer, given to the injured
19 workman and he takes it to his doctor or the hospital
20 when he goes for treatment.

21 MR. ESTEY: That is your form 156?

22 MR. KERR: Yes.

23 MR. ESTEY: Now you have handed Mr.
24 Johnston a group of forms.

25 MR. KERR: Perhaps these should be
26 admitted as an exhibit, sir.

27 MR. ESTEY: Yes, I think so.

28 EXHIBIT NO. 8

Treatment memorandum,
29 doctor/hospital and
30 several other documents.



1 MR. KERR: Would you like me to explain
2 what is in this exhibit?

3 MR. ESTEY: No. First of all, before you
4 lose me, I would like to know why it is you don't leave
5 the employee's report form on the employer's premises. I
6 presume there is a good reason and I would like to know it.

7 MR. KERR: All that we require the man to
8 do, if he wishes to report the accident to us, is to send
9 us a letter or post card. We find that by having forms
10 involved that the workman must go to his employer and it
11 is not always convenient for him. As we have heard, men
12 work on many work sites and there is no guarantee that
13 these forms are going to be readily available to the men
14 and we feel that it works a better system if he merely
15 sends us a notification on his own that he has had an
16 accident.

17 MR. ESTEY: I asked you the question
18 because of the terminology on page 2 of your brief where
19 you say, "when no lost-time accidents are reported" and
20 I presume that means come to the attention of the Board
21 from whatever source?

22 MR. KERR: Yes, sir.

23 MR. ESTEY: "The necessary forms are sent
24 out within three days". Now I assumed, but I guess wrongly,
25 that that includes the form for the workman to fill out.

26 MR. KERR: That is correct, sir. We
27 send him the workman's report of accident form 6 which he
28 completes and sends back.

29 MR. ESTEY: Why wouldn't you save a lot
30 of time and perhaps the argument that memories fade if



1 form 6 were left, a supply were left available in the
2 employer's premises? Has that been found to have been of
3 no assistance?

4 MR. KERR: In some cases, sir, this con-
5 tributes to the delay in that we can have a duplication of
6 claim files set up on that basis and, as a result, we have
7 two files for the one accident.

8 THE COMMISSIONER: I can think of another
9 objection. It has been said here that some of these
10 reports by workmen, they didn't really understand what
11 was in them, that they had been filled out by the employer

12 MR. KERR: That is a very good point, sir.
13 We try to deal with the injured workman as such. This is
14 his workman's report of accident. He does not have to
15 complete it in the presence of his employer or request
16 his employer to witness his signature. This is the man's
17 report of accident.

18 MR. ESTEY: Where do you send the form?
19 To his home? On that point we heard some evidence that
20 the man was confronted with a form and asked to sign it.
21 Now what form would that be? Would that be 6?

22 MR. KERR: By whom, sir?

23 MR. ESTEY: Well the evidence indicated
24 the employer.

25 MR. KERR: We do not send the man a
26 form which must be signed in the presence of the employer.

27 MR. ESTEY: Do you have anything you can
28 add to what has been said or to explain what has been
29 said that the complaint, as I understand it, was that
30 many of these new Canadians couldn't read English.



1 MR. KERR: This is true, sir

2 MR. ESTEY: Somehow their form was filled
3 out for them or the report was filled out for them and
4 they were asked to sign it. Now it may not be a form, I
5 don't know. The evidence was not too clear. But I am
6 asking you whether the Board, in its administration of
7 this matter, has found this to be a practice which has to
8 be overcome by investigation, or do you think it is not
9 a difficulty, this business of forms being signed by
10 people who can't read them and don't understand what the
11 report says

12 MR. KERR: We have encountered that, sir,
13 and this frequently leads to the investigation situation.
14 Some workmen do take their forms to their employer to be
15 completed and, in many instances, the employer serves a
16 very useful service to his employee by seeing that it is
17 completed properly and the man signs it and the man sends
18 it in. There could be other situations where, perhaps,
19 it doesn't work out quite that way for the employee. One
20 thing we watch is the signature of the workman may be
21 different than the writing in the completion of the body
22 of the report. This is one indication to us that the man
23 did not complete the body of the report, although he did
24 sign the report. This may or may not be of assistance to
25 us in the adjudication of the claim if we run into
26 problems

27 MR. ESTEY: Then after you get the report
28 from the employer and you receive form 6 back from the
29 employee, then you make the initial adjudication, at
30



1 MR. KERR: Well, in the interests of
2 speeding up payment, if the employer's report form 7
3 indicates a clear-cut accident, such as the man was hit
4 by a flying object and he had a fracture of his leg and
5 obviously is going to be off work for a considerable
6 period of time, we will send the man one week's payment of
7 compensation even without having received the workman's
8 report or the doctor's report.

9 MR. ESTEY: And that is how you are able
10 to get 90 per cent of those attended to in the first six
11 to ten days?

12 MR. KERR: This is correct, sir.

13 MR. ESTEY: I take it, on occasion, you
14 have to make a recovery of compensation where the decision
15 is against the applicant?

16 MR. KERR: Occasionally, but not very
17 often. We have to be pretty sure that this man is going
18 to be off work for more than a week. We just send one
19 week's compensation on that basis and in these cases we
20 know that the man is going to be off work longer than
21 that. There are a few cases where an overpayment does
22 occur and, of course, we must recover that money from the
23 injured workman. It is very minimal, sir.

24 MR. ESTEY: Then, when you make the
25 adjudication whether or not it falls into the 90 per cent
26 category of prepayment, as it were, you make the
27 adjudication, I take it, after you have got either the
28 employer's report and/or the employee's report and/or an
29 investigation?

30 MR. KERR: We also have the doctor's



1 ... file, the doctor's first report. Those are the
2 three basic reports to complete the file.

3 MR. ESTEY: And then you decide whether
4 you need an investigation if you haven't already made that
5 decision?

6 MR. KERR: We may, before that decision
7 is made, consider making further inquiry by mail. We may
8 bring the man to the Board's office if he is in Toronto,
9 for a statement to clarify the circumstances.

10 MR. ESTEY: Or you may direct an investi-
11 gator to go out?

12 MR. KERR: That is right, sir

13 MR. ESTEY: Where are these investigators
14 sited around the province?

15 MR. KERR: We have 20 investigators on
16 the Investigation staff. Most of them work out of Toronto
17 but we do have a Claims Investigator at our office in
18 Port Arthur, Fort William and we have another one stationed
19 in Ottawa and the man in Ottawa covers the Ottawa area,
20 the eastern townships of the province of Ontario. The
21 rest of the province is serviced by Claims Investigators
22 who are sent out from the head office.

23 MR. ESTEY: When these investigators go
24 to the scene of the accident, I take it from what you said,
25 they interview the workman?

26 MR. KERR: Definitely, sir.

27 MR. ESTEY. I take it when they do so,
28 they tell the workman why they are there and what the
29 purpose of the interview is?

30 MR. KERR: That is correct.



1 MR. ESTEY: Do they ask him to sign
2 anything at that time? If he makes a statement, do
3 they ask him to sign it?

4 MR. KERR: No, the only time we take
5 signed statements is when the man wishes to withdraw his
6 claim. If he has a representative with him during the
7 interview and if there is a conflict of statement.

8 MR. ESTEY: Does the investigator, when
9 he writes out his report on talking to the workman, show
10 the workman what he has in his report?

11 MR. KERR: Not unless it is to be signed,
12 sir, but he would review the evidence to make sure that
13 what he has is correct.

14 MR. ESTEY: That is he would review it
15 with the man?

16 MR. KERR: With the man, sir, yes.

17 MR. ESTEY: Then when it gets down to the
18 various appeal stages, that report is not given to the
19 man in its complete form but it appears in the summary
20 of the evidence we have heard about?

21 MR. KERR: That is right, sir.

22 MR. ESTEY: He doesn't get the full
23 statement?

24 MR. KERR: He doesn't have a copy of that
25 statement

26 MR. ESTEY: If he has signed it, does he
27 get a copy?

28 MR. KERR: No, sir, he does not get a copy.

29 MR. ESTEY: He does not get a copy if he
30 signs it?



1 MR. KERR: On request, Mr. Black advises
2 me, he can have a copy of that.

3 MR. ESTEY: And I take it that at that
4 stage, and by that I mean the investigation, that this
5 language question, of course, comes to the notice of the
6 Board?

7 MR. KERR: That is right.

8 MR. ESTEY: What practice do you have for
9 workmen who can't speak English and the investigator
10 arrives on the scene, and I take it he is not multi-
11 lingual, what do you do?

12 MR. KERR: It is up to the investigator
13 to obtain an interpreter who is not associated with the
14 case, to assist in taking a statement from the man.

15 MR. ESTEY: That is you don't take the
16 fellow on the next bench as the interpreter but you get
17 an interpreter?

18 MR. KERR: We don't take men on the next
19 bench.

20 MR. ESTEY: Now this investigation which
21 you conduct is, I suppose, almost invariably done at the
22 employer's premises?

23 MR. KERR: Part of it takes place at the
24 employer's premises. The employer must be given an
25 opportunity and his representative is interviewed on the
26 employer's premises. Frequently the workman is interviewed
27 on the employer's premises, particularly if he has
28 returned to work, but not necessarily. The workman can
29 be interviewed wherever he wishes - in his own home, or
30 wherever he would like the interview to take place



1 MR. ESTEY: On those occasions where you
2 interview the workman, do you give any prior notice of
3 that investigation to the employer?

4 MR. KERR: The workman receives a letter
5 advising him that there will be an investigator in his
6 community in the very near future, to look into the facts
7 of his case.

8 MR. ESTEY: Do you give a similar letter
9 of notice to the employer?

10 MR. KERR: Yes, we do, sir.

11 MR. ESTEY: So when the investigator comes
12 the employer knows what the purpose is and that he is
13 coming and that he is going to interview both the workman
14 and the employer? All that is known to the employer at
15 the time?

16 MR. KERR: Oh, yes.

17 MR. ESTEY: Then when you interview the
18 employer, do you follow the same procedure, the investi-
19 gator writes out a statement of someone else's version
20 of the accident?

21 MR. KERR: He records what the employer
22 tells him or gives him in the form of information con-
23 cerning the accident.

24 MR. ESTEY: In the routine of investiga-
25 tion, is it Board policy that the employer should sign
26 the statement as taken down by the investigator?

27 MR. KERR: No, the employer does not
28 sign the statement.

29 MR. ESTEY: He is not asked to sign a
30 statement?



1 MR. KERR: He is not asked to sign a
2 statement.

3 MR. ESTEY: Does he get a copy of the
4 investigator's report?

5 MR. KERR: No, sir.

6 MR. ESTEY: If he asks for it, can he get it?

7 MR. KERR: No, sir.

8 MR. ESTEY: What is the reason for that
9 policy?

10 MR. KERR: The information which we obtain
11 is confidential and it is our feeling that he should not
12 have a copy of the investigator's notes investigating the
13 accident or the circumstances surrounding it.

14 MR. ESTEY: You say the information the
15 investigator gets is confidential, but I am directing my
16 questions to the statement he makes while he is talking
17 to the employer and the employer's nominated witnesses,
18 as it were. That is not confidential. Why wouldn't the
19 employer get a copy of what the investigator transcribes
20 of that interview?

21 MR. KERR: Well, I suppose if he requested
22 it, he would but he already knows what has been said. I
23 don't think we have had that type of situation, but I
24 would think if the employer wanted a statement of what he
25 said, I don't see where we would have any objection to
26 giving him a copy of what he said.

27 MR. ESTEY: That is why I asked the
28 question, because a moment ago I thought you were indi-
29 cating he couldn't have a copy, and it seemed rather
30 strange to me.



1 MR. KERR: I may have misinterpreted your
2 question. I was thinking in terms of the entire investi-
3 gation notice.

4 MR. ESTEY: Or getting a copy of the
5 entire notice?

6 MR. KERR: Yes.

7 MR. ESTEY: So if he wanted to see what
8 the investigator's conclusions were, he could see?

9 MR. KERR: Conclusions?

10 MR. ESTEY: Conclusions of the interview
11 of the employer.

12 MR. KERR: That is right.

13 MR. ESTEY: Not the employee, the employer.

14 MR. KERR: Not the conclusions of the
15 entire investigation

16 MR. ESTEY: But if the employer said,
17 "Look, you had better talk to these three people because
18 they were there", and he brings them into the room and
19 introduces them and an investigator interviews them and
20 writes it all out, I assume that the employer could get
21 a copy of that part of the investigator's report?

22 MR. KERR: There would be no objection.

23 MR. ESTEY: But as to getting access to
24 the overall conclusion as to whether or not this was a
25 compensable accident, the employer is not entitled, I
26 take it, to receive that part of the investigator's report?

27 MR. KERR: That is right. I might also
28 say, too, that the investigator does not make the decision
29 he obtains the facts and the information that the adjudi-
30 cator at Head Office requires. These facts and all the



1 relevant information requested is obtained and the file is
2 returned to the adjudicator and the adjudicator makes the
3 decision in a case, not the claims investigator.

4 MR. ESTEY: But I suppose if the claims
5 investigator -- does he give his opinion as to the cause
6 of the accident or the actual event, as to what it was?

7 MR. KERR: He must obtain the facts con-
8 cerning the event and he records the facts. He also visits
9 the scene of the accident in a great many cases and we
10 use his report to assist in making the decision.

11 MR. ESTEY: Now you come back to the
12 claims branch and the individual claims adjudicator, who
13 has the file, makes the first decision?

14 MR. KERR: Yes.

15 MR. ESTEY: On page four of your brief, you
16 say that if he comes to the conclusion that the claim
17 should be rejected, he does so, "with the approval of the
18 supervisor"? I had better look. I may not have the
19 wording right -- yes, it is with the approval of his
20 supervisor, not "the". Can the claims adjudicator reject
21 a claim without the approval of his supervisor, or must
22 he have the approval?

23 MR. KERR: He must have the approval of
24 the supervisor because we consider the rejection of a
25 claim to be a rather serious matter and, therefore, we
26 have to have the opinions of two claims officers on file.

27 MR. ESTEY: Before there is a rejection?

28 MR. KERR: Yes, and in instances where
29 there is a medical element involved, there will be an
30 initial of a medical officer, because there may be a



1 medical aspect involved in the rejection of this claim so,
2 therefore, there would be at least two initials by claims
3 officers and one by a medical officer.

4 MR. ESTEY: And that would be the medical
5 officer attached to that section?

6 MR. KERR: Yes, he would be located
7 physically, right in that claims section.

8 MR. ESTEY: Right in that section?

9 MR. KERR: Yes.

10 THE COMMISSIONER: It does not have to
11 have the approval of the supervisor if he is allowing
12 the claim?

13 MR. KERR: No, sir. Here again I should
14 perhaps clarify that: There are some accidents that are
15 quite clear cut and they can be allowed by any claims
16 officer. There are other accidents where the circum-
17 stances are not quite so clear cut and those instances
18 we require the opinion of two claim's officers or the
19 concurrence of two claims officers to accept the claim.
20 I do not wish to leave the impression that all claims
21 are accepted on the initial or the authority of one
22 claims officer.

23 MR. ESTEY: I was going to ask you that.
24 I find that a little difficult to comprehend. How does
25 the supervisor know that the claim is of a type requiring
26 two acceptance signatures if the man who first gets it
27 allows the claim?

28 MR. KERR: Well, this is set down in
29 our operating procedures, the types of claims that can
30 be allowed on one initial are clear cut accidents where



1 something has happened at work; not strains and sprains;
2 where something has happened at work -- a scaffold or
3 something has given way, some machine or something has
4 occurred that has caused bodily injury and it is quite
5 clear cut.

6 MR. ESTEY: And no discrepancy in the
7 reports?

8 MR. KERR: Exactly.

9 MR. ESTEY: In that kind of a case the
10 claims adjudicator allows it and that is the end of the
11 review?

12 MR. KERR: That is the end of the initial
13 allowance. The claim is reviewed as it goes on. We have
14 quality control for claims that go on for a long period
15 of time, but I think I am getting off the subject now.

16 MR. ESTEY: I want to come to that and
17 perhaps it is convenient to ask you now. In those cases
18 where the allowance involves a substantial, obvious
19 substantial liability into the future on the part of the
20 Board and its fund, is there in your policy an automatic
21 review of that allowance by more than one claims officer?

22 MR. KERR: Yes, there is. At the end of
23 twelve weeks, the claim, including the initial allowance
24 and everything subsequent to that initial allowance, is
25 reviewed by a senior claims officer in each section. He
26 is usually the supervisor or the assistant supervisor in
27 each claims compensation section, and he must carry out
28 a complete review of that claim. He also has regard for
29 the man's progress. He must make sure that we are still
30 paying for what the claim was originally allowed and that



1 nothing else has crept in, some subsequent condition which
2 was not related to the original accident. This is some-
3 thing we must watch.

4 MR. ESTEY: Before we get into this question
5 of temporary disability and checking back on that, what
6 percentage, if you can answer this, of your claim files
7 which are allowed, are reviewed by more than one claims
8 officer?

9 MR. KERR: We could not give you an
10 accurate figure on that.

11 MR. ESTEY: Is there any spot check on it,
12 as we hear the Income Tax people give their files, so that
13 one in eight are pulled out and spot checked by a review
14 team of claims adjudicators?

15 MR. KERR: We use our senior claims officers
16 as supervisors to perform this quality control function,
17 and their duty is, every day, to check so many claims of
18 each claims officer in his section. So, this is, in effect,
19 a spot check, not only of the long standing claims but of
20 all the claims. He spot checks the claims that are being
21 handled on the desk today.

22 MR. ESTEY: Then, let us move on in the
23 sequence of time, and can you tell me what happens in the
24 case of a claim which is allowed but, at the time of
25 allowance, there is no terminal date to the compensation;
26 that is, it is not a four-day claim which is allowed on
27 the basis of a four-day claim, but it is open ended at
28 that point: How do you keep track of the liability of
29 the funds so that it does not extend beyond the need for
30 compensation?



1 MR. KERR: When it extends beyond -- if
2 there is no terminal date in the doctor's report and there
3 is no indication that he has gone back to work, we must
4 then obtain progress reports from both the workman and the
5 doctor and, in some instances, the employer and on the
6 basis of this further information, it is the responsibility
7 of the claims officer to allow subsequent payments of
8 compensation, to authorize further payments of compensation.
9 The claim, if it does become prolonged, if the claims
10 officer, who is trained in injury and incapacity but is
11 not a doctor, becomes prolonged, the claim is referred to
12 the medical officer who is in the section, to review,
13 concerning the length of disability and the man's treatment.

14 MR. ESTEY: But in the bulk of cases, is
15 the return to work or alternatively the entitlement to
16 continue compensation dependent upon the doctor's answer
17 to the question, "When will he be fit to return to work"?

18 MR. KERR: Basically, yes, sir, because
19 we base payment of compensation, once the claim has been
20 allowed, on the basis of medical evidence. He provides us
21 with a description of the man's condition, the last time
22 he was seen in his progress report and gives us a forecast
23 of how long he feels the man will be off work. He is
24 also asked to tell us what treatment the man is receiving
25 and whether or not he feels that the injured workman is a
26 candidate for admission to the hospital or rehabilitation
27 centre.

28 THE COMMISSIONER: If I may interrupt,
29 this authorization of compensation, how frequent are the
30 intervals when it has to be authorized?



1 MR. KERR: It depends upon the nature of
2 the case, sir. If a man has a fracture of the femur
3 which is the big bone in the leg, we know he is going to
4 be off work for at least two or three months, so the
5 claims officer can authorize compensation for a period of
6 time, let us say, six weeks, without obtaining further
7 medical reports. Then the payments are sent out every
8 two weeks.

9 THE COMMISSIONER: Well, in an ordinary
10 case where the injury is not very heavy, is there an
11 automatic review of that -- is there an automatic author-
12 ization, or do you authorize it at a particular time?

13 MR. KERR: It is authorized for a
14 particular time.

15 THE COMMISSIONER: For a week at a time,
16 or something like that?

17 MR. KERR: No, payments are made every
18 two weeks but if a doctor indicated today that this man
19 is going to be disabled for an additional six weeks, we
20 would authorize payments for four weeks; as an example,
21 and then at the end of four weeks we would obtain further
22 progress reports from the doctor and the man and they
23 come back to the claims officer and it is his responsi-
24 bility to review the case again and determine whether
25 or not further compensation should be authorized. There
26 is a review each time these progress reports come in,
27 and the progress reports are not sent out automatically;
28 they are only sent out as frequently as we require them
29 for the authorization of compensation.

30 MR. ESTEY: To reduce that to practical



1 terms, supposing a workman is cut: Cuts don't all heal
2 in the same length of time and all people don't heal in
3 the same length of time, and the doctor, when he fills out
4 form 7, cannot say in answer to your tenth question when
5 the man is going to be able to go back to work. Now,
6 what do you do in that case?

7 MR. KERR: Well, then, we can only pay
8 compensation to the date on which the doctor saw that
9 man and said, "Yes, he is still disabled as of today.
10 I do not know how long he will be disabled, but he is
11 disabled as of the date I saw him". So, we will pay
12 compensation to that date and then we must obtain a
13 further report from the doctor.

14 MR. ESTEY: How is that done?

15 MR. KERR: We send a report to the workman
16 and he is requested to take it to his doctor for examina-
17 tion. The doctor completes the report and the doctor
18 mails the doctor's report to us.

19 MR. ESTEY: Is the man receiving compen-
20 sation at the time he gets that form to take back to the
21 doctor again?

22 MR. KERR: Well, he has only received
23 compensation to the date to which we authorized it, and
24 in this example that you gave me, it was the date on
25 which he was last examined by the doctor, and the doctor
26 said that he was disabled as of today but that tomorrow,
27 he did not know.

28 MR. ESTEY: So that is the practical way
29 that you get the man back to the doctor for another
30 examination?



1 MR. KERR: Yes, sir.

2 MR. ESTEY: If he were still on compensa-
3 tion, I take it, you might have trouble getting the sub-
4 sequent checks.

5 MR. KERR: Not necessarily, sir. We may
6 want to have a doctor's report. Perhaps our medical
7 department says, "We would like an up-to-date report".
8 The man is still off work and entitled to compensation
9 but we would like a progress report on his present con-
10 dition. We would like to see how his treatment is
11 progressing, and we would ask the man to take a report
12 to his doctor to have it completed.

13 MR. ESTEY: Under what circumstances
14 would you get the report that you referred to a moment
15 ago from the employer in these cases.

16 MR. KERR: It may be a case where the man
17 is fit for suitable employment and we are not sure if the
18 man has returned to employment and we are asking the
19 employer to give us information as to whether or not he
20 has returned to employment.

21 MR. ESTEY: That is, if the doctor had
22 answered 10 (B), "If capable of performing some suitable
23 restricted work, give date first able". If the doctor
24 indicates some lesser work, that would be followed up,
25 perhaps through the employer?

26 MR. KERR: Yes. We don't do it routinely
27 sir. We have to be careful in the use of forms. Someone
28 the other day mentioned forms, and we try to exercise
29 discretion and only send out forms and request reports
30 when we need them for adjudication or treatment purposes.



1 MR. ESTEY: What does the doctor do if he
2 has language troubles? Do you provide an interpreter for
3 the doctor?

4 MR. KERR: These doctors could be any
5 place in the province, sir.

6 MR. ESTEY: Does that happen or is it a
7 problem the Board is aware of?

8 MR. KERR: I think it does happen but we
9 do receive the reports.

10 MR. ESTEY: Somehow they get in?

11 MR. KERR: They get in to us. I must
12 confess, no doubt they do have trouble communicating on
13 occasions but as far as a workman coming to our head
14 office is concerned, to be examined by our own doctors,
15 we have interpreters who take care of this problem.

16 MR. ESTEY: Now, before we leave this,
17 Mr. Kerr, would you go through Exhibit 8, would you go
18 through these pages of Exhibit 8 in the order they appear,
19 starting from the top which is the pink coloured sheet,
20 Mr. Kerr, and tell us what each of these are for?

21 MR. KERR: Yes, sir. The Treatment
22 Memorandum is stock-piled, if I may use that term, with
23 the employers. They have a supply on hand and when the
24 employee is injured, the employer is required to complete
25 one of these forms and it is addressed to the doctor or
26 hospital indicating that the employee, by name and
27 address, claims to have been injured in our employ on
28 such and such a date and requires medical aid. We are
29 sending a report to the Workmen's Compensation Board,
30 Ontario. And then he puts the name of the firm in there



1 and the address and the name of the official.

2 We have in a box here, the statement, "The
3 workman has the initial choice of doctor, but may not
4 change doctors without permission of the Workmen's Compensa-
5 tion Board, Ontario".

6 MR. ESTEY: At this stage of the game, the
7 doctor knows the man is an employee, apparently covered
8 by the Act, but doesn't know, of course, whether the claim
9 will be compensable?

10 MR. KERR: That is correct.

11 MR. ESTEY: So, at this stage, who is
12 obligated to pay the doctor?

13 MR. KERR: At this stage, I suppose there
14 is no obligation, but in practice what we do, if a claim
15 is rejected, let us assume all the reports are in now and
16 we are placed in the position of rejecting the claim,
17 two situations might occur: If we use the doctor's report
18 as part of the information on which to make a decision,
19 then we do pay the doctor for the first visit. If the
20 claim is rejected because the accident did not arise out
21 of employment, it happened at home, even though the
22 employer did send this, then we do not pay the doctor
23 for the first visit.

24 MR. ESTEY: He has to be paid by the
25 workman?

26 MR. KERR: He collects from the workman
27 or from some other source.

28 At the bottom of this form we have instruc-
29 tions to the doctor. "If it appears that the workman will
30 be disabled from earning full wages for MORE THAN TWO



1 CALENDAR DAYS, please submit a doctor's first report,
2 Form 8, to the Workmen's Compensation Board. Delay in
3 completion will delay payment of compensation." The
4 doctor does have a supply of these reports, the doctor's
5 first report, in his office.

6 MR. ESTEY: The fact that the doctor gets
7 paid for a certainty if the accident is compensable, I
8 take it, has been found to be no deterrent to accurate
9 reporting?

10 MR. KERR: I am sorry, sir, I don't quite
11 follow you.

12 MR. ESTEY: The anomaly of the doctor's
13 position here, bounces right off the paper. He is paid
14 by the Board if the report leads to a compensable claim,
15 you told us.

16 MR. KERR: In certain circumstances.

17 MR. ESTEY: He may not be paid by the
18 Board necessarily, if the result is that it is not a
19 compensable claim and so my question, which I hope no
20 one will take as being a cynical question, is whether or
21 not the Board's experience has found that this anomalous
22 method of payment operates as an obstruction to good
23 reporting from the doctor.

24 MR. KERR: No, sir, the doctor's report
25 of the situation, gives his findings and gives his
26 opinion as requested on the questions and I don't think
27 at that stage he is concerned with the outcome of the
28 claim.

29 MR. ESTEY: In question 3, for example,
30 he is to answer by completing the workman's history of



1 the injury.

2 MR. KERR: That is right, on his doctor's
3 first report.

4 MR. ESTEY: So the doctor has to put down
5 and write out what the workman tells him.

6 MR. KERR: Briefly, that is what he does.
7 The history of accident given by the doctor is usually
8 pretty short.

9 MR. ESTEY: I got ahead of you, on form
10 1, the treatment memorandum is filled out and it goes to
11 the doctor and I take it the doctor uses that as his
12 authority to proceed and he then sees the man and completes
13 the form 7 which we have already discussed.

14 MR. KERR: He completes form 8, the
15 complete one, the doctor's first report, the pink one.

16 MR. ESTEY: I am sorry, form 8. There is
17 no special form that the man is asked to sign to authorize
18 the doctor to tell all to the Workmen's Compensation
19 Board?

20 MR. KERR: No, sir.

21 MR. ESTEY: And I take it the Board has
22 not encountered any opposition from the workman at having
23 his medical secrets revealed to the Board.

24 MR. KERR: Not to my knowledge.

25 MR. ESTEY: It is implicit in the
26 arrangements that the doctor has to tell the Board the
27 basis of the injury and the nature of the injury?

28 MR. KERR: Right, sir.

29 MR. ESTEY: What is the white form, the
30 second page of Exhibit 8?



1 MR. KERR: The second page of Exhibit 8
2 is a two-part form. The first is a little letter which
3 goes out to the workman and attached to it is the workman's
4 report of accident which we request the man to complete
5 and return to us as promptly as possible. The letter
6 gives him some guidance. And on the reverse side is an
7 outline of information concerning Workmen's Compensation.
8 It tells him the benefits that are payable in case of
9 non-fatal cases, tells him what earnings are used for
10 compensation payments, there is a section which describes
11 medical aid that is provided in the case of an injured
12 workman and some general comments about Workmen's Compensa-
13 tion. There is also a list of our district offices
14 with telephone numbers in case the injured workman is in
15 an area served by the district office and wishes to
16 contact that office for some assistance. The top part of
17 the form is a tear-off and we suggest to the man that
18 he should keep this stub for reference and on this form
19 is his claim number, his own name and address and the
20 date of accident. We have found, in the past, that
21 sometimes when a workman would lose a record of his
22 claim number with our large volume of business it
23 is most important and helpful for the man to use his
24 claim number whenever he corresponds with the Board. It
25 helps us provide a better service in taking care of the
26 inquiry.

27 The form itself is to be completed by the
28 workman. Frequently, we find that he does obtain
29 assistance from a Union representative or an employer,
30 even his clergyman will complete it for him. But the man



1 must sign it himself.

2 MR. ESTEY: Is that the form that follows?

3 MR. KERR: The white one, form 6, Workman's
4 Report of Accident.

5 MR. ESTEY: The second page, form H, is a
6 covering letter sending out form 6.

7 MR. KERR: That is correct.

8 MR. ESTEY: I take it that the Board
9 regularly encounters the language question we talked about
10 here earlier, because in the middle of the form it inquires
11 as to whether the man speaks English.

12 MR. KERR: That is right.

13 MR. ESTEY: So I take it that the Board,
14 from that stage on, would be able, if it had a multi-
15 lingual set of forms, to service this man in a language he
16 might be able to read after you looked at form 6.

17 MR. KERR: We would have to obtain, perhaps,
18 one other factor, over and above, "Do you speak English" -
19 "What language do you speak?" We would have to find that
20 out.

21 MR. ESTEY: Why don't you ask him what
22 he can read and write, rather than speak? Because from
23 then on, if he was Portuguese or Italian, as we have heard
24 is common, I take it it would not be too much of an
25 expense for the Board to at least have one line in those
26 two languages at the bottom of a form, warning the man of
27 the consequence of signing the thing if he didn't under-
28 stand it. That suggestion was made. Have you any comments
29 as to whether that was practical?

30 MR. KERR: This could be done, sir.



1 MR. ESTEY: I know that some of your forms
2 have a foreign language on them because your accident
3 notices are in different languages, but do any of your
4 forms proper have more than the English language on them?

5 MR. KERR: No, all of our forms are in
6 English at the present time.

7 MR. ESTEY: Then, what is the next form
8 which is the fourth page of Exhibit 8?

9 MR. KERR: This buff form is the Employer's
10 Report of Accident or Industrial Disease, form 7.

11 MR. ESTEY: And this is the one that the
12 employer is given a supply of?

13 MR. KERR: That is correct, he has a
14 supply in his office.

15 MR. ESTEY: And this is the one he should
16 fill out within the three-day period?

17 MR. KERR: This is the form that we
18 require him to fill out but not always is it possible
19 for him to fill it out within the three day period.

20 MR. ESTEY: Where do you measure that
21 three-day from - notice to the employer of accident?

22 MR. KERR: The Act says three days from
23 the happening of the accident. This is not practical in
24 many situations because the employer would not know that
25 an accident had occurred to the man until, perhaps after
26 the three-day period.

27 MR. ESTEY: In the case of a disablement,
28 of course, you would have greater difficulty as to where
29 you run the three days from.

30 MR. KERR: Well, the Act is rather specific



1 on that point. Section 115 says --

2 MR. ESTEY: You say it is specific dealing
3 with disablement?

4 MR. KERR: Well, the definition of accident,
5 that includes disablement, sir.

6 MR. ESTEY: What is the happening of the
7 disablement in (a), I wonder - 115 (1) (a).

8 MR. KERR: Well the definition of accident
9 includes disablement arising out of employment.

10 MR. ESTEY: But when?

11 MR. KERR: We would have to take it from
12 the date of the incident or the occurrence which caused
13 the disablement.

14 MR. ESTEY: Or which is said to have caused
15 the disablement.

16 MR. KERR: Yes.

17 MR. ESTEY: Because that might be quite
18 a debate, as to what caused the sophisticated disablements
19 that Mr. Osler lectured on yesterday.

20 MR. KERR: Yes, this is sometimes a point
21 that requires a great deal of thought.

22 MR. ESTEY: I take it you do not fire a
23 great number under section 4 of 115?

24 MR. KERR: We never fine any employer for
25 failure to report an accident within three days.

26 MR. ESTEY: You never do?

27 MR. KERR: It is in the Act and it can be
28 used but it is not very practical in many situations.

29 MR. ESTEY: If an employer said, "I am
30 not going to be bothered with that, you don't pay me to



1 report these things and I am going to hire somebody, I
2 won't do it". You would surely file him.

3 MR. KERR: We have penalties but we don't
4 confine it to just the three-day limitation. We do impose
5 penalties on a good many occasions but it is not based on
6 just the three days. We request a report from the employer
7 and if he does not send us the report, we send a second
8 request and at that time he is told if the report or
9 information - it could be even after the claim is allowed
10 - is not received, then we are forced to impose a penalty,
11 which we do.

12 MR. ESTEY: So what you are saying is the
13 Board policy with regard to subsection (2) is to use it
14 when there is a refusal by the employer to cooperate?

15 MR. KERR: In fact, in many instances
16 of no-lost-time accidents, some employers would prefer that
17 we charge them, rather than go to the expense of sending
18 us a report of accident, so obviously they have to be
19 charged.

20 MR. ESTEY: Is there much of a practice of
21 charges under Section 115? Have you any statistics? You
22 can let me have those later, if they are not available.

23 MR. KERR: Yes, I have a brief report
24 here. From July the 1st, 1966 to the week ending September
25 the 23rd, 1966, approximately 1,379 firms were charged
26 under Section 115 (3).

27 MR. ESTEY: How many was that?

28 MR. KERR: 1,379 firms were charged under
29 Section 115 (3). The total number of charges amounted to
30 1,789. Some employers were charged twice.



1 Now, we must say in fairness, that the
2 majority of these charges are for no-lost-time accidents -
3 medical aid only. We do not encounter a problem of any
4 size when there is compensable lost time. The majority of
5 these relates to no-lost-time accidents where perhaps we
6 have a \$5 or \$10 doctor report on file which we must con-
7 sider for payment.

8 MR. ESTEY: That you charge against the
9 employer if he does not comply under Section 115 (3)?

10 MR. KERR: That is right, yes.

11 MR. ESTEY: Then on the next page in this
12 group of forms, is the form 8. You have already discussed
13 that with me and below that we come to form 26, Mr. Kerr.
14 What is that?

15 MR. KERR: This is the Doctor's Progress
16 Report which is sent to the workman to be taken to the
17 doctor, and why we do this in that manner is that we want
18 the man to go to the doctor for examination, so the doctor
19 will complete his examination and provide us with an
20 up-to-date report on the man's condition and his forecast
21 concerning the workman's ability to return to work. The
22 form also asks a few questions that are helpful from the
23 treatment point of view, not only for the Board to know
24 what is being done for this man, but it may be that our
25 medical department or our hospital and rehabilitation
26 centre can assist in the treatment of the case, if it is
27 the type of case that should be admitted to our hospital.

28 MR. ESTEY: This is the kind of form that
29 your policy has indicated will not be released to the
30 workman or to anyone else.



1 MR. KERR: This is the kind of form that
2 was discussed, yes. Usually, at the same time the work-
3 man's progress report goes out with this one

4 MR. ESTEY: Question 4 (A) on this form
5 says, "Specify any factors delaying recovery". Is that
6 the point of the form where the doctors most frequently
7 indicate that the workman is perhaps delaying his own
8 recovery or that he is not getting back to work as fast
9 as the doctor thinks he should?

10 MR. KERR: That is a possibility. More
11 frequently what happens is the doctor will say that
12 infection has set in or that there is non-union of the
13 bone, in the case of a fracture. This again serves two
14 purposes -- and it could be the statement that you make
15 that perhaps the man is not moving as quickly towards
16 returning to work, as he had anticipated.

17 MR. ESTEY: Out of the 380,000 claims in
18 the year, it would be a safe bet that that kind of thing
19 happens, and I am wondering how the doctor reports that
20 to the Board

21 MR. KERR: He would put that at any place
22 in his report that he feels it should go in. Sometimes
23 it is under question 2 or 3 or question 4, as you have
24 indicated

25 MR. ESTEY: And that does happen?

26 MR. KERR: It does happen, sir.

27 MR. ESTEY: And then form 41.

28 MR. KERR: Form 41 is the Workman's Progress
29 report which is sent directly to the workman, and he
30 completes this form and sends it back to us. We tell him



1 that if there is a doctor's report form attached, which
2 is the one we just discussed, to please take it to his
3 doctor for completion. Not always do we have a doctor's
4 report completed at that time. That is why we have it
5 worded in that manner.

6 MR. ESTEY: When would you use this without
7 the doctor's report attached? What kind of a case would
8 that be?

9 MR. KERR: It may be a case of temporary,
10 partial disability where we already have medical evidence
11 on file or information on file indicating that he is
12 going to be temporarily partially disabled for the next
13 two or three months. There is no point in obtaining a
14 medical report during that period. One thing we might
15 want to know and must know is, did the man return to work,
16 and in those circumstances we would send a report to the
17 workman only to determine whether or not he has returned
18 to work during that period. On the basis of this informa-
19 tion we know whether we should pay him partial compensa-
20 tion on a percentage basis or, if he goes back to work,
21 we must inquire to determine whether or not he is
22 entitled to partial compensation on a wage-loss basis.

23 MR. ESTEY: Is there any comparable form
24 for the employer to fill out automatically when the man
25 comes back to work?

26 MR. KERR: Yes, it is called form 9.

27 MR. ESTEY: We do not have that one.

28 MR. KERR: I am sorry, I did not include
29 that

30 MR. ESTEY: But there is such a form and



1 is it mandatory that the employer fill this out as an
2 automatic thing?

3 MR. KERR: He has a supply of form 9 along
4 with form 7 and the instructions and request is that he
5 complete it and return it to the Board when the man
6 returns to work.

7 MR. ESTEY: I take it for simple, economic
8 reasons the employer does fill out that form and does send
9 it into the Board.

10 MR. KERR: In the majority of cases, yes.

11 MR. ESTEY: Attached to that is a big,
12 yellow notice which is form 82 and I take it it is to be
13 posted by employers on the notice boards.

14 MR. KERR: Yes, I suppose the only way we
15 can identify this is as form 82. The employer is required
16 to post this in a conspicuous place. Usually it is in the
17 first aid room or some other spot where it can be viewed
18 by employees. This is covered under regulation 10, headed
19 up, "Posting of information regarding Act. Every employer
20 in schedule 1 or schedule 2 shall post up and keep posted
21 up in conspicuous places within easy access of his workmen,
22 such card, pamphlet or other information concerning the
23 Act or this regulation as is supplied to him by the Board."
24 This is the one we supply to the employer.

25 MR. ESTEY: In line with the ideas raised
26 by the Labourers Union and by others, does the Board print
27 this yellow sheet, form 82, in Italian or Portuguese?

28 MR. KERR: No. It is in English at the
29 present time, sir.

30 MR. ESTEY: Moving on to the thorny problem



1 of accidents arising out of and in the course of employ-
2 ment, somebody in one of the briefs yesterday, read out
3 a Board directive stating that before an accident would
4 be found to be compensable, it had to be more than it
5 happening on the premises or happening within the hours
6 of work; it had to be the result of something directly
7 linked to the man's employment. Then there was a discussion
8 about picking up a piece of timber for which the man was
9 paid but which would not necessarily be compensable,
10 depending upon whether or not it was unusual exertion. Do
11 you remember that?

12 MR. KERR: Yes.

13 MR. ESTEY: Is it the Board's policy that
14 not only must you show that the condition arose on the
15 premises, or in the course of going somewhere on behalf
16 of the employer, that it was part of his duties that he
17 was performing at the time of the injury; and thirdly,
18 it was something which would not have happened, but for
19 the fact the man was performing a duty for his employer;
20 and fourthly, and the most contentious of all, is it an
21 unusual act but for which the condition would not have
22 come about? Do you need all four of those in the Board's
23 policy?

24 MR. KERR: That is right. We have to show
25 it arose out of employment, and we have to establish a
26 causal relationship.

27 THE COMMISSIONER: All of this is set out
28 in the Board Order?

29 MR. KERR: That is right.

30 MR. ESTEY: In the carpenter case, which



1 was in the United Electrical Workers' brief -- do you
2 remember that happened to a man who went up a flight of
3 stairs with his tools and the Board would not allow him
4 compensation for the ensuing heart attack; do you recall
5 that?

6 MR. KERR: I remember that case from what
7 was told here.

8 MR. ESTEY: I understand there was somebody
9 else and not the United Electrical Workers. I take it
10 the Board policy is that that carpenter would have been
11 compensated if, instead of going up a flight of stairs, he
12 had been required by reason of a failure of a lift, to
13 walk up fifteen flights of stairs.

14 MR. KERR: I don't think we know enough
15 about that particular case for me to discuss it intelli-
16 gently. I don't know what the facts of the case are.

17 MR. ESTEY: I don't know either. I just
18 want to know if the carpenter, in the ordinary course of
19 his duties, had a heart attack, then, in that simple case,
20 you don't give him any compensation.

21 MR. KERR: No, we have to look for a
22 link -- a causal relationship.

23 MR. ESTEY: So, if he did something
24 unusual physically, and your doctors said, or a doctor
25 said that this unusual activity had caused the happening
26 of the heart attack, he would get compensation?

27 MR. KERR: Not necessarily any doctor.
28 We may require, and in these cases I am sure we do,
29 require the opinion of specialists.

30 MR. ESTEY: That takes me to the next



1 question; when do you use the medical referee section in
2 the Act?

3 MR. KERR: As indicated by Mr. Poole, the
4 medical referee section in the Act is reserved for the
5 Board. The Board is the body that refers the man to a
6 medical referee. However, there are many instances where
7 we have two opinions medically, on a claim file -- this
8 would be at the claims department level -- and the claims
9 officer requests the medical department to send a man to
10 a specialist or a more senior specialist or for a more
11 senior medical opinion.

12 MR. ESTEY: In the course of adjudication,
13 when you run into these conflicts of opinion in the medical
14 field, can the claims adjudicator ask the Board to issue
15 an order appointing the medical referee?

16 MR. KERR: No, sir, that is reserved for
17 the Board.

18 MR. ESTEY: It has to go all the way up
19 through the appeal ladder before that happens?

20 MR. KERR: That is correct, sir.

21 THE COMMISSIONER: I want to make sure I
22 have heard you correctly. The appointment of a medical
23 referee only occurs on instructions of the Board itself?

24 MR. KERR: That is right, sir.

25 THE COMMISSIONER: But it is an event,
26 I suppose, which occurs fairly frequently?

27 MR. KERR: I don't think so, sir. I don't
28 think it occurs too frequently, but it can occur. I have
29 no statistics as to how often it occurs.

30 MR. ESTEY: In Section 23 of the Act it



1 says, "Where a workman has, upon the request of the
2 employer, submitted himself for examination --- " and so
3 on, "and a copy of the medical practitioner's report has
4 been furnished in the former case by the employer to the
5 workman, in the latter case by the workman to the employer,
6 the Board may, on the application of either of them, / or of its own motion
7 refer the matter to a referee." That is the section I
8 had in mind, as to why that section is not used before
9 the matter has gone through the elaborate appeal structure
10 to determine a conflict.

11 MR. KERR: Before we reach that stage, we
12 have resolved our conflict to the satisfaction of the
13 claims department.

14 MR. ESTEY: I see.

15 MR. KERR: We have obtained more senior
16 medical opinion to get off this equal scale of two medical
17 opinions. We have already done that without a medical
18 referee.

19 THE COMMISSIONER: We may be ahead of
20 ourselves here, but you have experts on your own staff;
21 in addition to that do you use, in that connection, with-
22 out having to go and get a referee, do you use the outside
23 specialists for advice?

24 MR. KERR: Yes, we use both our own
25 specialists on staff and specialists available to us on
26 the outside. This is frequently done.

27 THE COMMISSIONER: So this question of
28 referee only comes in in later stages on an odd case?

29 MR. KERR: Yes. We have to, in the
30 adjudication claims, determine what the medical evidence



1 is, and when we do run into two different medical opinions,
2 our medical department will refer that claim, even in its
3 initial adjudication, to an outside specialist for an
4 opinion. Perhaps there is a difference of opinion on the
5 diagnosis of a case, and the diagnosis of the case will,
6 we'll assume, be important to the allowance of the claim:
7 We have to clarify this and we do this by sending the
8 man and the case to a specialist, not under the medical
9 referee system but just in our normal powers to investi-
10 gate, to obtain the facts on which an adjudication can
11 be based.

12 MR. ESTEY: So, I take it, in the everyday
13 operation of the Act, if this arises and the man is up in
14 Huntsville, he is sent to a specialist in Huntsville or
15 Bracebridge, or that area, and you get a further, and
16 perhaps better opinion, before the claim is actually
17 adjudicated.

18 MR. KERR: That is our practice.

19 MR. ESTEY: I was going to, on this
20 question arising out of an accident, ask you if you had
21 an opportunity to look at the cases raised by Mr. Osler
22 on behalf of International Nickel, on these back cases.
23 Do you remember those - that evidence about the man on
24 the ladder?

25 MR. KERR: I have had no opportunity to
26 do that. I don't even know the identification of the
27 cases as yet.

28 MR. ESTEY: The other one I wanted to
29 ask you about was the case of Mr. Yourt on behalf of
30 Rio Algom, where the man had no history of a prior heart



1 condition but he had been a milkman and he ran a farm and
2 he had about 18 other deals going at the one time and then
3 he had a heart attack, as luck would have it, on the
4 employer's premises and it went through to the top and
5 finally someone said "Yes, because of his prior condition,
6 we will grant this man compensation." You remember that
7 case?

8 MR. KERR: I remember the presentation.

9 MR. ESTEY: I take it, from what you said
10 that you have not had a chance to look at that case.

11 MR. KERR: No, sir, I don't even know the
12 identification of the case, as yet.

13 MR. ESTEY: All right. You will appreciate
14 that the difficulties that are reflected in the briefs
15 to date concentrate on that part of the definition of
16 accident which came in in 1963 and which refer to dis-
17 ablement.

18 MR. KERR: I gather from the presentations
19 made, that seems to be the point.

20 MR. ESTEY: And the problem seems to be
21 that the word "disablement" doesn't in the ordinary sense
22 of the language, associate itself with an event.

23 MR. KERR: No, not now.

24 MR. ESTEY: It is the result.

25 MR. KERR: It is the result. Even before
26 this amendment, there were many cases of sprains and
27 strains that were accepted in accordance with the Board
28 Order, dated December 13th, 1934.

29 THE COMMISSIONER: That is what I was
30 going to ask, Mr. Kerr, is this Board Order of 1963, does



1 it differ, in any way, from the Board Order of 1934?

2 MR. KERR: Yes, it does.

3 THE COMMISSIONER: In what way?

4 MR. KERR: The former Order said there
5 must be a specific strain or incident and the new Order
6 states that there must be a causal relationship, which was
7 in the other one, "It is not sufficient that disablement
8 comes on during work, but rather there must be something
9 about the work which can be considered to have caused the
10 disablement to come". And here are the key phrases I
11 would suggest, "such as strenuous work, awkward position,
12 unaccustomed strain or even a movement arising out of the
13 work which is reasonable to consider has caused the
14 disablement". I would think the new features would be,
15 "such as strenuous work". I think "awkward position"
16 would probably come under the former one and, "specific
17 incident or strain".

18 THE COMMISSIONER: The former one did
19 not restrict itself to specific strains or incidents.
20 Under such circumstances it may appear that an injury has
21 taken place to muscles, ligaments, even in the absence of
22 what is commonly regarded as an accident or fortuitous
23 event.

24 MR. ESTEY: I think Mr. Kerr is referring,
25 Mr. Commissioner, to the very top line.

26 THE COMMISSIONER: "This may be assumed
27 to be an accident". I remember the top line says some
28 specific strain or accident.

29 MR. KERR: And this was the basis upon
30 which we adjudicated claims.



1 MR. ESTEY: It is partially contradictory,
2 though.

3 THE COMMISSIONER: Yes. In any event,
4 you interpreted that to allow you the scope to allow
5 compensation, even though there had been no particular
6 incident.

7 MR. KERR: Well, we used the criteria of
8 particular strain or incident, sir, as the first line of
9 the old Order indicates, 1934 Order - "Where some specific
10 strain or incident occurred". This was our basis for
11 the acceptance for those who were accepted on the basis
12 of strain and sprain. We have had back cases for years
13 and there have been back cases allowed and back cases
14 rejected, prior to the 1963 amendment.

15 MR. ESTEY: I am a little puzzled as to
16 what the Board interprets the extension of the definition
17 to mean in the practice of allowing and disallowing claims,
18 though, because in both cases you say there must be
19 something about the work. Now, that something means an
20 event, I suppose.

21 MR. KERR: Not necessarily, sir. It could
22 be - well, I suppose an event is a word, it could arise as
23 a result of strenuous work.

24 MR. ESTEY: That would be the amendment.

25 MR. KERR: Not necessarily. It could be
26 over a period of time, not necessarily a long period of
27 time, it could be a short time, but I don't know if you
28 could call it an event at this particular moment as
29 opposed to something that takes place over an hour.

30 MR. ESTEY: Would that mean, to get down



1 to reality that if I had a job which is very strenuous -
2 and I wont go further than to say it is strenuous - and I
3 develop a back condition, then I would get compensation,
4 but if Mr. Guthrie had a similar job a few feet away,
5 which is not routinely strenuous and he developed a back
6 condition, then he would not get compensation?

7 MR. KERR: In the example you gave, we
8 would have to check into several factors. First of all,
9 we would want to know, was there a pre-existing back
10 condition? We would want to know fully what you were
11 doing, what kind of work you were doing, what were the
12 mechanics involved and we would want to know what is the
13 present diagnosis and if we could establish a causal
14 relationship, then we would have authority to accept that
15 claim.

16 THE COMMISSIONER: It must be a question
17 of fact for the Board in every case, in all of these
18 circumstances.

19 MR. KERR: Each case must be dealt with
20 individually, sir.

21 THE COMMISSIONER: Of course the allegation
22 here is that you consider that the increase in back cases
23 has indicated that the Board has put in a different
24 interpretation, a very different interpretation on the
25 section of the Act, since its amendment, than it did
26 before.

27 MR. KERR: Well, I think that the amendment
28 has broadened to a degree, the acceptance of certain
29 claims.

30 MR. ESTEY: On that point, which you might



1 as well deal with now, the International Nickel figures
2 you heard, indicate a rather startling change in the
3 number of claims being filed and a very startling increase
4 in the number of back claims being allowed. Do you have
5 any explanation as to that?

6 MR. KERR: Not at this time, Mr. Estey.
7 We are taking steps to analyse the figures for that
8 company, along with other information, and next week we
9 hope to present, as you have requested, some more infor-
10 mation on this subject.

11 MR. ESTEY: I only have one or two more
12 questions and perhaps if I speed it up, we can finish
13 before we adjourn, Mr. Commissioner. I want to talk
14 about the waiting period. The Act says, under section 3,
15 "Where in any employment to which this part applies,
16 personal injury by accident ..." and so on, "... the
17 employer is liable to provide or to pay compensation in
18 the manner and to the extent hereinafter mentioned,
19 except where the injury does not disable the workman for
20 a period of at least three calendar days from earning
21 full wages"; - at least three calendar days. And then
22 I see in Exhibit 8, page 1, form 156, in very heavy type,
23 it says: "DOCTOR - if it appears that the workman will
24 be disabled from earning full wages for MORE THAN TWO
25 CALENDAR DAYS, please submit a doctor's first report",
26 and all through the forms in Exhibit 8, I notice that on
27 the second page of Exhibit 8, form H, you say: "If you
28 are disabled from earning full wages for more than two
29 calendar days as a result of the accident, please complete..."
30 And then on the reverse side of that form - on the back



1 of form 6, there is another little box which says: "Do
2 not answer these questions unless your disablement lasts
3 more than two calendar days". I am wondering what the
4 basis for the Board's policy or interpretation of the
5 statute as meaning more than two calendar days whereas
6 (a) says at least three calendar days is.

7 MR. KERR: I think, sir, that frequently,
8 when people read this section, they forget about the
9 words that follow "calendar days". "Does not disable the
10 workman for a period of at least three calendar days".
11 Let us not stop, let us read on, "...from earning full
12 wages".

13 THE COMMISSIONER: You say, on the
14 strength of that, he could keep on working and he doesn't
15 have to stop work.

16 MR. KERR: Yes, that is true.

17 THE COMMISSIONER: As long as he is not
18 earning full wages?

19 MR. KERR: If he has suffered a wage loss
20 because of his accident, he may be entitled, in that case,
21 to compensation on a partial disability case, 75 per cent
22 of his wage loss. But, if we may come back to the example
23 people have been quoting, if I may help to clarify this,
24 if I may, Mr. Commissioner, let us take a man who was
25 injured on Tuesday. He is injured around noon, half a
26 shift. He is disabled from earning full wages that day
27 because he can't work in the afternoon, so that is con-
28 sidered one day he is disabled from earning full wages.
29 True, he has not been disabled the full day, but he has
30 been disabled part of that day, and thereby disabled from



1 earning full wages for that day. Then he is off work
2 Wednesday, he is off work Thursday. In actuality, he
3 has been off work two and a half days, but he has been
4 disabled from earning full wages for three days. This is
5 why we say more than two days.

6 MR. ESTEY: So he would become eligible
7 to receive his compensation on Thursday?

8 MR. KERR: No, it is dated back to the
9 time he ceased work. Let us say on Tuesday he stopped
10 work at noon.

11 MR. ESTEY: I didn't say "entitlement",
12 I said "eligible". He becomes eligible after what period
13 of time?

14 MR. KERR: Two and a fraction calendar
15 days.

16 MR. ESTEY: On your example, when does
17 he become eligible?

18 MR. KERR: On Friday. If he is disabled
19 Tuesday, Wednesday and Thursday, he has completed his
20 eligibility because he has been disabled from earning
21 full wages for those three days and he is now eligible
22 for compensation.

23 MR. ESTEY: His holding period ends
24 Thursday midnight?

25 MR. KERR: Yes, calendar day.

26 MR. ESTEY: Now, if he is hurt on Friday
27 and he doesn't miss - he is not scheduled to work, let
28 us get a simple example, his plant is completely shut
29 down on Saturday and Sunday, every weekend of the year,
30 there is no overtime in his plant so he is injured Friday



1 noon and he comes back to work on Monday morning, how
2 much compensation would he get?

3 MR. KERR: If he was injured Friday noon,
4 he has been disabled that day from earning full wages,
5 because he can't work the full day and, therefore, did
6 not earn full wages. If the medical evidence indicates
7 that he was also disabled on Saturday and Sunday, those
8 two days, calendar days, are considered as part of his
9 entitlement. If he is declared fit to return to work on
10 Monday, he would have entitlement because he has been
11 disabled from earning full wages for three calendar days.
12 They would only pay compensation for the half day on
13 Friday because Saturday and Sunday were not working days.

14 MR. ESTEY: You would pay compensation at
15 whatever rate was fixed for the loss on Friday?

16 MR. KERR: Friday, only, sir. May I make
17 another point that I think is rather important?

18 MR. ESTEY: Yes.

19 MR. KERR: If the employer, out of the
20 goodness of his heart, or for some other reason, pays the
21 man his full wages for the day of accident, be it Friday
22 or any other day, the man would not be entitled to
23 compensation for that half day, but we would consider
24 that half day as part of his entitlement as he is still
25 disabled from earning full wages that half day, even
26 though the employer, out of the goodness of his heart,
27 or for some other reason, paid him his full day's wages.
28 He was still disabled from working that half day and,
29 therefore, was disabled from earning full wages that day.

30 MR. ESTEY: So he would make a little



1 money out of that example?

2 MR. KERR: He would, yes. No, excuse me,
3 I am forgetting a point. In that example, if the employer
4 pays him for his full day, we don't pay the man the half
5 day's compensation. It is just counted as an entitlement
6 day.

7 MR. ESTEY: Counted as an entitlement day
8 for what purpose? You are not going to allow the claim
9 anyway, he hasn't got a claim.

10 MR. KERR: Let us go back to this Tuesday
11 half day, Wednesday full day and Thursday full day. That
12 is disabled from earning full wages for three calendar
13 days.

14 MR. ESTEY: He doesn't lose the accounting
15 because the employer paid him?

16 MR. KERR: That is right, but we don't
17 double pay the man for that day.

18 MR. ESTEY: But on my Friday example,
19 though, he is paid for some reason by the employer but
20 he is home Friday afternoon and he is back there Monday
21 morning and the evidence shows that if he was called
22 upon to work on Saturday and Sunday, he could not have
23 worked. Now what would you do in that case?

24 MR. KERR: If he did not receive his
25 full pay for Friday, we would pay him a half-day's
26 compensation. If he didn't work Saturday and Sunday, we
27 would not pay compensation for those two days. If his
28 employer paid him his full day for Friday, he has
29 entitlement, but we would not pay him compensation,
30 because he received his full wages for that day. He hasn't



1 | lost anything.

2 | MR. ESTEY: So he couldn't make any money
3 | out of it?

4 | MR. KERR: He couldn't make any money in
5 | that example.

6 | MR. ESTEY: I take it then, that the
7 | Board's interpretation of the policy under 31 (a) is that
8 | they don't read the works, "from earning full wages" with
9 | reference to Saturday and Sunday, but they say that means
10 | that if you were incapable of making full earnings, if he
11 | were required to work Saturday and Sunday, that then the
12 | time counts?

13 | MR. KERR: Yes.

14 | MR. ESTEY: So the calendar days apply
15 | to holidays only if the medical evidence indicates he
16 | could have worked on Saturday and Sunday?

17 | MR. KERR: We must have evidence to
18 | indicate to us, the doctor's report and information to
19 | indicate to us that he was disabled on Saturday and
20 | Sunday, for us to accept those as days of disablement.
21 | If the doctor said this man could return to work Saturday
22 | -- and this does occur on Friday, accidents, despite what
23 | has been said; it did occur that the doctor would say
24 | this man was fit to go back to work on Saturday; therefore,
25 | he has not had entitlement, because he has not been
26 | disabled from earning full wages.

27 | MR. ESTEY: Of course, under that cir-
28 | cumstance, the employee knows why he did not get the
29 | compensation, because of his friend, the doctor

30 | MR. KERR: I am sure he does.



1 THE COMMISSIONER: Then, the objection and
2 the submission that it should be three working days, is
3 based upon the opinion that if a man had to take three
4 days off when he was actually losing wages, he would be
5 a little more careful if the three days came at a time
6 when two of them were holidays anyway.

7 MR. KERR: Yes, and I gather from listening
8 to the submissions this is the point that has been made.

9 THE COMMISSIONER: And as to any differences
10 in costs that this change would incur, we can get that
11 from Mr. MacDonald next week, I suppose.

12 MR. KERR: Yes, sir. We don't normally
13 keep figures and statistics on things of this nature and
14 a study is being done for you and it will be available
15 next week.

16 MR. ESTEY: I have finished everything
17 with Mr. Kerr, and I think that is all we have on the
18 schedule for this week.

19 THE COMMISSIONER: Does anybody have any
20 questions to submit to Mr. Estey or to me?

21 MR. OSLER: Mr. Estey, will you give those
22 case numbers --- I supplied them to you but I did not
23 supply them to the Board, yesterday. Do you want me to
24 give them to Mr. Kerr?

25 MR. ESTEY: I have them and I will give
26 them to Mr. Kerr.

27 Mr. Commissioner, if there is nothing
28 further today, then perhaps we can advise those present
29 that on Monday, the 3rd of October, at 10:00 o'clock in
30 the forenoon, we are going to proceed with three additional



1 topics, all of which are the subject of a notice sent out
2 on the 23rd of September, the first of which is Benefit
3 Payments and Rates of Compensation, which includes
4 compensation and salary ceilings, partial disability
5 allowances, adjustment for increases in cost of living,
6 fatal claim benefits and retroactivity of increases in
7 benefit payments.

8 The second topic which will follow the
9 completion of the briefs, on the first one: Financial
10 Matters, which include four items, investment of Board
11 funds, schedule 1 classifications and assessments,
12 relationship of compensation to other benefits and,
13 the elimination of schedule 2.

14 The third topic next week will be Board
15 Operations including the composition of the Board and
16 the annual report.

17 There will be subsequent notices as to
18 when we are going to deal with medical matters, vocational
19 rehabilitation and accident prevention.

20 THE COMMISSIONER: We will adjourn now,
21 until Monday.

22 --- Adjournment.
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PROVINCE OF ONTARIO

ROYAL COMMISSION

ON

THE WORKMEN'S COMPENSATION ACT

HEARINGS HELD AT
TORONTO, ONTARIO

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3 October 1966

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Toronto, Ontario

IN THE MATTER OF The Public Inquiries
Act, R.S.O. 1960, Ch. 323

- and -

IN THE MATTER OF an Inquiry Into and
Report Upon The Workmen's Compensation
Act

BEFORE: The Honourable Mr. Justice W. A.
McGillivray, Commissioner, at
Room 200, 67 Richmond Street
West, Toronto, Ontario, on Monday,
3rd October, 1966.

APPEARANCES:

W. Z. Estey, Q.C.)
and) Counsel to the Commission
H. D. Guthrie)

G. A. Johnston Secretary

ALSO PRESENT:

W. Kennedy International Union of Mine,
Mill and Smelter Workers

J. H. Craigs Ontario Federation of Labour

J. H. Daugharty, J. A.)
Douglas, W. Ives and) Motor Vehicle Manufacturers'
P. J. Tuz) Association

R. Koskie, G. Gallagher) Labourers' International
J. Stefanini, J. Lynch,) Union of North America,
W. Farrell) Local 183

W. Paterson and M.)
Gulliford) United Electrical, Radio
and Machine Workers of
America

W. R. Kerr, G. Black,)
J. Greavds, A.G.) Workmen's Compensation
MacDonald) Board

M. H. Nicols and S.) Ontario Federation of
Petronski) Construction Associations

Nethercut & Young Limited, Official Reporters,
48 York Street, Toronto, Ontario



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Toronto, Ontario

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Admissions of

Motor Vehicle Manufacturers' Association

International Union of Mine, Mill
and Smelter Workers

Historic Development of Labour

Labourers' International Union of
North America, Local 101

Ontario Federation of Construction Associations

United Electrical, Radio and Machine
Workers of America

BXII, 122

[illegible]

... (S) ...

6. The time period 1967 and 1968, 1969 between P.J. 20 and January 1970, and 1970 and 1971.

19 Letter from the Ontario C. -
sent to Chrysler dated
May 11, 1966 to Mr. G. A.

11 Letter to [redacted] of [redacted]
[redacted] Immigration [redacted]
[redacted]

12 Letter from Willson, 11/2/1911.
 Letter from Willson to Willson, 11/2/1911.
 Letter from Willson to Willson, 11/2/1911.
 Letter from Willson to Willson, 11/2/1911.

13 Cf. also a report of Professor
of the University of Michigan
employment there from 1911 to
March 15, 1936

14 statement/declaration of [redacted]
[redacted]

15 Copy of letter from Mac ...
to the Board ...
10, 1969 addressed to Mr. ...

Reporters, 4100 1st Street, N.W.,
Scenario



1 --- On commencing at 10:00 a.m.

2 THE COMMISSIONER: Well, today we consider,
3 firstly, Balance of Payments and Rates of Compensation
4 including various headings, the first of which is Compen-
5 sation and Salary Ceilings. How do you propose to take
6 these, Mr. Estey? Are you going to hear submissions on
7 all of them or one at a time under the sub-headings?

8 MR. ESTEY: We had planned, Mr. Commissioner,
9 to deal with them, one major heading at a time, that is
10 all the four or five items under Benefit Payments we will
11 deal with at the one time because the sub-divisions are
12 somewhat arbitrary and some brief writers have put two or
13 three of those sub-paragraphs into one and some have not
14 dealt with all of the items under number 1, so we propose
15 to take those people who have discussed in their briefs
16 any items under number 1, all at the one time, and,
17 similarly, with two and three if that is agreeable to you
18 Mr. Commissioner. But we have today, to start with, the
19 Motor Vehicle Manufacturers' Association, who, by reason
20 of timetables, people being out of the city, were unable
21 to be here to deal with items 1 and 2, which is Appeals
22 Procedure, Claims Adjudication, but whose brief, in any
23 case, deals predominately with the question of accident
24 costs and benefits under Item number 1, today and if it
25 is convenient for you, sir, we propose asking the Motor
26 Vehicle Manufacturers' Association to deal with today's
27 topics but, while they are here, to deal with the topics
28 we have already dealt with.

29 THE COMMISSIONER: All right.

30 MR. FAIR: Mr Commissioner, my name is



1 Russ Fair from the Motor Vehicle Manufacturers' Association.
2 With your permission, I would like to introduce your
3 Lordship to Mr. John Daugharty from American Motors, Jack
4 Douglas from Ford and Mr. William Ives from General Motors.

5 MR. DAUGHARTY: Mr Tuz, from Chrysler in
6 Windsor, I don't know whether he missed his plane, but he
7 just has not shown up.

8 THE COMMISSIONER: Well, you gentlemen
9 will probably be able to speak for him.

10 MR. DOUGLAS: Mr. Commissioner, the Motor
11 Vehicle Manufacturers' Association is pleased to have the
12 opportunity to make a submission in respect of the inquiry
13 into the Workmen's Compensation Act. It's employment in
14 Ontario is large and it affects, actually, a great deal
15 of other associated industry in this province and, in fact,
16 in Canada.

17 The Motor Vehicle Manufacturers, individually,
18 and as an association, for a great long time, have been
19 directly interested in Workmen's Compensation and in
20 safety and accident prevention and, as a matter of fact,
21 since 1950, have retained a committee of members whose
22 principal interest was in studying legislation. We have
23 covered this, actually, in a memorandum, but we have
24 attempted to keep pace with developments in the Act and
25 in touch with the Board in order to acquaint ourselves
26 with its practice and with its viewpoint.

27 I think we have really set out our thoughts
28 in this memorandum and I presume, therefore, it should
29 not be necessary to go into it in detail here. We will
30 be glad to attempt to answer any questions or to clarify



1 anything in this memorandum which is raised.

2 MR. ESTEY: This memorandum is not on the
3 record, Mr. Douglas, and either you or I, I suppose,
4 should read at least the principal parts of it into the
5 record. Perhaps that would be the easiest way to proceed
6 and then we have a few questions we would like to discuss
7 with you after you have done that.

8 The first part you have already dealt with
9 in a summary way. I think it is quite an important brief
10 and I suggest you might want to read it.

11 MR. DOUGLAS: This is a memorandum, dated
12 August the 15th, 1966, addressed to The Honourable Mr.
13 Justice George A. McGillivray, a Royal Commission on the
14 Workmen's Compensation Act, Parliament Buildings, Toronto,
15 2.

16 The motor vehicle manufacturers in the
17 province of Ontario are pleased to have the opportunity
18 to bring to your attention certain matters of concern
19 to our industry with respect to the subject of the
20 Workmen's Compensation Act of Ontario.

21 The Motor Vehicle Manufacturers' Associa-
22 tion members are the manufacturers in Canada of automobiles
23 and trucks. These manufacturers constitute one of the
24 major industries in Canada. The Association's members
25 employ almost 50,000 persons in Ontario. An indication
26 of its size and impact may be illustrated by reference
27 to table 3 on pages 24 and 25 of the Workmen's Compensa-
28 tion Board's Statistical Report for 1964 which shows the
29 amount of payroll covered by assessments issued for that
30 year by employer rate groups. This shows that the



1 automotive - excuse me, is there anyone who would like
2 a copy? I think we have some extra copies.

3 THE COMMISSIONER: We have a copy of the
4 Statistical Report, if that is what you are referring to.

5 MR. DOUGLAS: No, a copy of our brief.

6 THE COMMISSIONER: Oh, yes, if anyone
7 would like one, please give it to them.

8 MR. DOUGLAS: This shows that the auto-
9 motive sub-group in class 11, namely rate group 306, had
10 an assessable payroll of \$277 million. It is the fourth
11 largest assessable group payroll of all employers in
12 Schedule 1. The members of the Association, acting
13 through the Association, have long taken a keen, active
14 interest in workmen's compensation and accident prevention.
15 In 1950 a Workmen's Compensation Committee was formed
16 within the Association and this was followed in 1952 by
17 the formation of its Industrial Safety Directors Committee.
18 Since their formation these committees have regularly held
19 several meetings each year and have also attended
20 meetings each year with officials of the Workmen's
21 Compensation Board. The Committee members are generally
22 familiar with the Workmen's Compensation Act, the Workmen's
23 Compensation Board's administration of the Act and the
24 cost of benefit awards and of assessment levies on its
25 members. This Association and its members are especially
26 interested in making a submission at this time in view of
27 recent trends in benefit costs, more recent amendments
28 to the Act and the Board's implementation of these.

29 Since the last inquiry into the Workmen's
30 Compensation Act conducted by the Honourable Mr. Justice



1 Roach in 1950 there have been a number of significant
2 changes made in the Act and over the intervening period
3 there have been many changes in the Board's administration
4 of the Act. In practically every instance these have
5 broadened the scope of the Act, improved the benefits
6 under the Act or made it easier for injured employees to
7 qualify for such benefits. Inasmuch as the employers of
8 the workmen pay the entire cost of the benefit payments
9 and of the administration of the Act, increased costs of
10 changes and extension fall directly on such employers.
11 The members of the Association approve the principle of
12 the provision of workmen's compensation benefits to
13 injured employees. They are concerned, however, as a
14 result of sharp increases that have occurred over the last
15 several years in the cost of benefits awarded and allowed
16 and of the Board's more recent interpretation and general
17 administrative practices with respect to claims allow-
18 ances and benefit awards.

19 Recent Extension of Benefits

20 In 1963 and 1964 amendments to the Work-
21 men's Compensation Act were enacted which considerably
22 broadened the basis for entitlement to compensation as
23 provided under the Act, as well as increasing the maximum
24 limits of compensation for lost earnings and the amount
25 of pensions to be provided to certain dependents of an
26 employee who has been killed and who are entitled to
27 benefits. Changes were also enacted amending the
28 definition of a compensable "accident".

29 This Association was of the opinion that
30 the improvements in the pension benefits for dependents



1 had been needed for some time. It was concerned, however,
2 as to the effects of the changes in basis of entitlement
3 to compensation, with respect to both the practical results
4 of the change and the financial cost. We are referring to
5 the amendments to Section 3, Subsection 1(a) enacted which
6 shortened the "waiting period" stipulated for entitlement
7 to compensation benefits from 5 days to 3 days, with a
8 second amendment in 1964 specifying that the waiting
9 period is to be calculated in "calendar" days, not
10 working days.

11 THE COMMISSIONER: Prior to that time,
12 did it not specify "calendar days"?

13 MR. DOUGLAS: I think it just said, "days".

14 In addition, the Workmen's Compensation
15 Board had placed an interpretation on this section of the
16 Act by which it awards compensation benefit payments when
17 the injured workman is off work for any period in excess
18 of 2 full days. We have not agreed with this interpreta-
19 tion and on March 20, 1963, at the time this 1963 amend-
20 ment was before the legislature, representations were
21 made to the Honourable H.L. Rowntree, Q.C., Minister of
22 Labour, by the Ontario Division of the Canadian Manufactur-
23 ers' Association requesting that legislation be drawn so
24 as to make it clear that a waiting period of 3 full days
25 was required. This part of the bill was not changed.
26 Furthermore, as of April 3, 1963 the Board issued an
27 Advisory Notice to employers as follows:

28 "Any workman injured on or after
29 April 3, 1963 shall be entitled
30 to compensation if he is disabled



1 from earning full wages for more
2 than two calendar days. Persons
3 in your employ who are responsible
4 for reporting accidents should be
5 advised of this change in legis-
6 lation. An Employer's Report of
7 Accident (form 7) will now be
8 required in those cases where a
9 workman experiences a wage loss,
10 as a result of injury, for more
11 than two calendar days."

12 We are of the opinion that the Board's
13 interpretation of this clause is wrong. We believe this
14 interpretation not only results in many compensation
15 claims being allowed which the Act does not provide for,
16 and the resultant costs of compensation being included
17 with the other benefit costs which are recovered from
18 employers by assessment, but also encourages employees
19 to delay returning to work for a day when they are phy-
20 sically able to, in order to qualify for compensation.
21 This opportunity is more easily taken advantage of when
22 an employee is injured on the last work day of the week
23 and decides not to return to work on the Monday following.
24 Furthermore, on those week-ends which include an extra
25 statutory holdiay (for which, in our industry, the workman
26 is paid) there is an additional temptation to stay away
27 the extra day to assure entitlement to compensation.
28 This can result in his receiving a double payment for the
29 statutory holiday, that is, payment by the employer under
30 the terms of the applicable union contract plus the



1 compensation benefit payment allowed by the Board.

2 As a practical matter, the shortened wait-
3 ing period observed by the Board makes it difficult or
4 impossible for an employer to follow up on the condition
5 of the employee to encourage his prompt return to work
6 when he is physically able, particularly when the injury
7 occurs the last working day of the week.

8 We submit that the Board's interpretation
9 of the "waiting period" as to entitlement to compensation
10 as being any period over 2 calendar days is not consistent
11 with the wording or spirit of the Act and that this
12 interpretation should be changed to conform with the
13 wording of the section.

14 The amendment to the definition of "accident"
15 enacted in 1963 added "sub-section (iii)" - "disablement
16 arising out of and in the course of employment". It is
17 felt this clause has tended to extend the benefits of the
18 Act to disabilities that arise from the physical condition
19 of the employee more than from an "accident" or "injury"
20 caused by or arising out of his work.

21 Accident Costs

22 It is suggested that the cumulative effect
23 of these extensions of benefit and the changes with
24 respect to the waiting period have been a principal factor
25 in the recent sharp increases in total benefit costs
26 experienced in our rate group. The annual (Financial)
27 Report of the Workmen's Compensation Board for the year
28 1965 is not yet available.

29 I should explain, at the time this was
30 written, we were not able to secure a copy.



1 Inasmuch as the financial results of that
2 year are believed to be of particular interest, more
3 fully reflecting the results of changes in the Act during
4 the past 3 or 4 years, it is anticipated that the informa-
5 tion that will be contained in such report would be
6 helpful in confirming cost trends, claim allowance practice,
7 etc.

8 Appendix "A" attached hereto sets out the
9 amount of assessments and of benefit payments and awards
10 over the past 6 years (1960-65) in our rate group 306.
11 Roughly, total accident costs have quadrupled in the
12 period from 1960 to 1965. The greatest increase in cost
13 has occurred in the last two years, 1964 and 1965. During
14 the 6 years the assessable earnings for this rate group
15 has approximately doubled. The assessable payroll of the
16 members of the Motor Vehicle Manufacturers' Association
17 constitutes the major portion of rate group 306. It is
18 evident that, after giving effect to the higher assessable
19 earnings, the accident costs charged to the employers in
20 rate group 306 have approximately doubled in the last 6
21 years. However, the 1965 accident cost is 145% higher
22 than 1963 whereas the increase in our assessable earnings
23 has been only 37 per cent.

24 THE COMMISSIONER: Do you propose to bring
25 up to date, this schedule that you have filed with your
26 brief? Have you it up to date today? The 1965 report
27 of the Board is now in your hands, is it not?

28 MR. DOUGLAS: That is right. This
29 schedule attached to our brief is correct, insofar as our
30 own rate group is concerned. This is current. We were



1 referring to the experience in other rate groups which we
2 did not have access to.

3 THE COMMISSIONER: So far as the 1965
4 figures are concerned, then, they are included in Appendix
5 A?

6 MR. DOUGLAS: This is correct.

7 Accident frequency of our member companies
8 over the period 1960-1965 is up. The liberalizing amend-
9 ments of 1963 and the interpretation by the Board necessar-
10 ily have resulted in more compensable accidents as allowed
11 by the Board, thus an increase in accident frequency is
12 recorded. It is worth noting that industry-wide accident
13 frequency is down when comparison is made on the A.S.A.
14 basis which is a constant standard. The costs related to
15 such frequency experience would not appear to account for
16 the large part of the increase in accident costs for this
17 period. The additional costs of increased benefits for
18 pensions of dependents would not account for this
19 difference. Increasing costs of medical services and
20 hospital accommodation undoubtedly account for a consid-
21 erable amount of the increased cost. However, it does
22 seem that a substantial amount of the increase in accident
23 cost is due to the shortening of the compensation waiting
24 period, and the broadening of the basis for entitlement
25 to benefits. This leads us to conclude that certain
26 recent amendments to the Act may have afforded more
27 benefits and a broader basis for accepting claims than
28 it is reasonably equitable at this period to charge solely
29 to employers. As stated above, this may also be partially
30 due to the Board's adoption of a shorter waiting period



1 as a result of interpretation not legislation. Occasional
2 cases are appearing in which compensation is awarded for
3 disabilities that have developed almost wholly due to the
4 physical condition of the employee and not to an accident
5 or his duties at work. In a number of these the disability
6 may develop as a chronic or partially permanent condition
7 and the permanent pension awards made add materially to
8 the cost of compensation.

9 This leads to another matter, with which
10 we would like to confirm our agreement. In 1950 the
11 Honourable Mr. Justice Roach, Q.C., reported on his
12 investigation into the Workmen's Compensation Act and
13 made recommendations concerning it. He pointed out care-
14 fully that the Workmen's Compensation Act originally in-
15 tended to provide compensation in respect of injuries
16 suffered by workmen in industry. He said it was not a
17 system for providing charity or unemployment insurance
18 nor was it social legislation for the purpose of elevating
19 the standard of one group in society at the expense of
20 another. He did point out that certain amendments enacted
21 prior to his report had the nature of social legislation
22 even though the costs flowing from them were charged to
23 one group of society - namely the employers. He concluded
24 by pointing out that if "social" type amendments continue
25 to be made to the Act, it will distort the purposes of the
26 Act and in addition will place on industry a burden "which
27 should be borne by society generally".

28 We suggest that some of the amendments
29 enacted in the last three years are in fact social
30 insurance, for example, the amendment to provide compensa-



tion for "disablement arising out of and in the course of employment" under the definition of accident (section 1, sub-section 1 of the Act) where this permits entitlement to compensation to an employee whose disablement is wholly or primarily due to his physical condition and not the result of a work injury or accident. To the extent of costs of benefit awards so made, we submit the industry is being unfairly penalized. In addition, where pensions have been retroactively adjusted and charged to the employers being assessed at the time of the adjustment, such steps constitute social legislation and at least a major part of such costs should be borne by all society and not just current employers, who then may find themselves included in those being assessed.

Changes in Legislation

The full costs of compensation benefits, the administration of the Act, rehabilitation and safety education are charged to employers. From time to time over the past 10 years, the government has changed the Workmen's Compensation Act and in most instances the changes have entailed considerable additional costs which are passed on directly to such employers. In nearly all cases, the government has merely announced proposed legislative changes by the bringing down of a bill for first reading and prior to that time it has not afforded an opportunity for employers involved to discuss the effects and the possible results of the changes. In most instances, the legislation has been passed quickly, making it most difficult for the employers involved to properly assess the effects of the proposed legislation and to



1 make representations to the government with respect
2 thereto. We would urge that employers have a reasonable
3 opportunity to consider such proposed amendments and
4 particularly those that approach the category of social
5 legislation.

6 Notice of Injury

7 Section 21 of the Act requires and outlines
8 the basis for an injured workman giving notice of and
9 information concerning the accident in which he was
10 injured to his employer as soon as practicable after the
11 happening of the accident and before the workman has
12 voluntarily left the employment of the work in which he
13 was injured. There is a growing tendency on the part of
14 some workmen to ignore this requirement and it appears
15 that the Board does not notify the workmen of the require-
16 ment of the Act. Further, in some quarters workmen are
17 being advised not to go to a medical doctor or first aid
18 attendant maintained by the employer as required under
19 section 15 of the Regulation, but to go to the employee's
20 own doctor in the event of injury. As a result, there
21 are an increasing number of cases in which employees are
22 claiming injury in which the employee has failed or
23 deliberately avoided informing his employer of the nature
24 of the injury and the facts surrounding the accident.
25 Thus, the employer is often not aware of an injury claim
26 until he receives a request from the Workmen's Compensa-
27 tion Board to provide the information normally supplied
28 in form 7, which is the employer's report of the injury
29 and the circumstances surrounding it, etc. Under such
30 circumstances, the employer is then unable to confirm the



1 injury or to effectively investigate the circumstances or
2 even to take steps promptly which might prevent a similar
3 injury occurring again. This practice may also aid un-
4 scrupulous persons in making false claims. It is respect-
5 fully suggested that consideration should be given to
6 amending the Act to provide that where an employee fails
7 to provide his employer, within a reasonable time, notice
8 of the accident as required under section 21, that he
9 shall not be entitled to compensation for any period prior
10 to the date of the notification. Of course, the Board
11 might be provided with powers to waive this requirement
12 where the circumstances, the place and the time of the
13 injury made it practically impossible for the employee to
14 so inform his employer.

15 THE COMMISSIONER: Just a moment, while
16 you are on 21. How will the suggestion that you make in
17 connection with 21, improve matters over what it is at
18 the moment. It says, "Sub-section 5, compensation or
19 medical aid is not payable unless notice under the Act is
20 given as soon as practicable after the happening of it".
21 Do you suggest that that be cut down because it is not
22 enforced to saying that compensation will not be paid prior
23 to the date of notification?

24 MR. DOUGLAS: Yes, where the employee has
25 had a reasonable opportunity to notify his foreman or a
26 fellow employee, or somebody in the plant when he is there,
27 that he has had an injury but, just seemingly, deliberately
28 avoids this. We, in our review of the situation, find
29 that there are claims being paid in which there has been,
30 apparently, no attempt by the employee to do so, and we



1 think it is quite unfair under the circumstances.

2 Small Claims

3 Recently we have observed indications that
4 the administrative department of the Board has appeared
5 to settle small claims without full inquiry. We question
6 the wisdom of settlement which may be based on administra-
7 tive efficiency rather than on merit. I am not sure that
8 that should not be "expediency", rather than "efficiency".
9 Such practice could eventually lead to frivolous or
10 fraudulent claims. More particularly it could be danger-
11 ous because it can establish grounds for re-opening a
12 claim for further benefits in later years.

13 THE COMMISSIONER: In connection with the
14 last, would it be sufficient if claims such as that, which
15 are paid without investigation, if it was stated that
16 payment would be made without prejudice to denying the
17 claim at a later period? I suppose what it means is that
18 if it is not investigated there might not even be a notifi-
19 cation to the employer,

20 MR. DOUGLAS: Another member of our group
21 is more familiar with this than I am but I understand --

22 THE COMMISSIONER: Well, we will hear
23 from him, perhaps.

24 MR. DOUGLAS: I think that would be best.

25 False Statements

26 We are aware that the Appeal Tribunal,
27 conducting hearings, receive statements under oath regard-
28 ing accidents. We are concerned that there is no provision
29 for penalties when false statements are made under oath
30 about an alleged injury. Denial of claim is, of course,

Rate 306 Experience1960 - 1965 inclusive

	<u>1960</u>	<u>1961</u>	<u>1962</u>	<u>1963</u>	<u>1964</u>	<u>1965</u>
	\$	\$	\$	\$	\$	\$
1)	153,863,000.00	136,623,000.00	149,117,000.00	179,863,000.00	276,939,000.00	N/A
2)	138,044,770.00	139,956,269.00	149,820,389.00	190,841,253.00	219,537,739.00	260,740,341.00
<u>ASSESSABLE PAYROLL</u>						
<u>ACCIDENT COSTS</u>						
Compensation	204,640.15	225,246.56	289,646.21	331,010.12	553,415.91	861,015.69
Capitalized Values	63,884.75	82,503.00	159,273.99	102,289.75	129,082.00	322,757.50
Medical Aid	138,923.97	167,059.87	198,611.32	230,627.60	321,230.53	440,367.65
Total Accident Costs	<u>407,448.87</u>	<u>474,809.43</u>	<u>647,531.52</u>	<u>663,927.47</u>	<u>1,003,728.44</u>	<u>1,624,140.84</u>

NOTE: ASSESSABLE PAYROLL - 1) Supplied by W.C.B.: Payroll covered by assessments issued and includes adjustment for prior year's difference between Provisional and Actual Figures (1965 not available)

2) Represents Motor Vehicle Manufacturers' Association Member Companies only.

Dated: August 9th, 1966.



1 no penalty under these circumstances. We suggest that
2 suitable penalties be provided if false statements are
3 given.

4 Medically Approved Work

5 We think it would be wise if the Board
6 would give formal recognition to the principle that
7 medically approved work, within the capabilities of an
8 injured workman, be furthered in the interests of therapy,
9 rehabilitation and reducing the burden of compensation.

10 THE COMMISSIONER: Well, don't the Board
11 do that now?

12 MR. DOUGLAS: There is another member of
13 our group who, I think, would be better qualified to
14 answer that, sir.

15 Dependents Allowance

16 In 1963 the pension awards to dependents
17 of workmen who are killed were increased. However, 1960
18 monthly pensions to widows or invalid husbands of such
19 deceased employees were retained at the figure of \$75 per
20 month. Within the maximum earnings limit stipulated under
21 the Act, the compensation payable to workmen is increased
22 with the increase in actual earnings of such workmen.
23 However, the Act has provided only a stated amount of
24 pension for the dependents of any workman killed. We
25 believe that the \$75 month allowance now provided
26 is inadequate in the light of present day conditions and
27 would recommend that these benefits be increased to an
28 appropriate limit.



1 MR. ESTEY: Mr. Douglas, I just have one
2 or two questions I would like to ask you about that memor
3 andum. First of all, I take it that your Association is
4 a member of The Canadian Manufacturers' Association?

5 MR. DOUGLAS: Our Association is not, but
6 certain of the Motor Vehicle Manufacturers' members are
7 members, also, of The Canadian Manufacturers' Association.

8 MR. ESTEY: Does your Association include
9 the suppliers, or just the manufacturers themselves?

10 MR. DOUGLAS: Just the manufacturers in
11 Canada, of motor vehicles.

12 MR. ESTEY: Not parts manufacturers?

13 MR. DOUGLAS: No, sir.

14 MR. ESTEY: So the 50,000 people whom
15 you refer to in your brief, are those people directly
16 involved in the assembly and manufacture of automobiles
17 and trucks?

18 MR. DOUGLAS: I think this is correct.

19 MR. ESTEY: In this schedule attached to
20 your brief, it might be convenient to deal with that, Mr.
21 Douglas, for a moment. I take it the rate the Board says is attributable to manufacturers of
22 motor vehicles and in that group, your people represent
23 the majority or the biggest part of it?

24 MR. DOUGLAS: That is correct.

25 MR. ESTEY: So that these figures that
26 you set out in your Appendix A are the figures relating
27 to employees of your component members.

28 MR. DOUGLAS: Of the whole rate group and
29 not just our own motor vehicle manufacturers.



1 MR. ESTEY: Do you have any idea what
2 portion or fraction of rate 306 of the group is made up
3 of your members, of the 50,000?

4 MR. DOUGLAS: I think, as a percentage,
5 it would be about 85 per cent. It has varied because
6 manufacturers of locomotives and manufacturers of buses
7 have been added in the past four years or more and bus
8 bodies are in our group, but they are judged by the Board
9 to be all in related activities.

10 MR. ESTEY: Now, in this graph, as you have
11 said in your brief, these figures climbed remarkably from
12 1963 through 1964 and 1965. I take it your 1966 experience
13 reflects a further increase over 1965, although perhaps
14 you don't have those figures.

15 MR. DAUGHARTY: We are having a meeting
16 at the end of this month, in which 1966 will be all
17 accumulated then to the end of September.

18 MR. ESTEY: Do you have any indication as
19 to whether the trend - if you graph this Appendix A, you
20 would have from '63 a sharp upturn produced through 1964
21 and 1965. Do you have any idea if your current figures
22 indicate that the graph would continue to soar up in
23 1966?

24 MR. DAUGHARTY: We think it would.

25 MR. DOUGLAS: Our figures indicate, our
26 own firm, that they are some up - not as sharply as
27 between 1964 and 1965, but still going up.

28 MR. ESTEY: I notice in that connection
29 that your increase in compensation in 1964 over 1963,
30 represents about \$220,000 odd, which is, I suppose, about



1 66 per cent over 1963.

2 MR. DOUGLAS: Yes.

3 MR. ESTEY: The following year 1964
4 66 per cent. Of course, the dollar increase is greater;
5 the bigger your outlay, the smaller the per cent, but your
6 dollars are going up and I take it that is what you are
7 interested in.

8 MR. DOUGLAS: We are interested in many
9 phases of it; It is the cost -- naturally, we look at
10 other things related to just the compensation assessment
11 costs that are tied in with this: the loss of staff that
12 you have to replace, the cost of an injury or a person
13 going off work. All these things add immeasurably to the
14 straight assessment cost that we pay.

15 MR. ESTEY: I notice, if we are going to
16 deal in proportions, that your total accident cost in the
17 six-year period covered by this graph, goes up four times
18 -- almost exactly four times -- whereas your group's
19 payroll during that same six-year interval, just doubles

20 MR. DOUGLAS: Not quite doubles. This is
21 really what concerns us.

22 MR. ESTEY: This is the real nub of the
23 analysis in schedule A rather than the individual per
24 centages.

25 MR. DOUGLAS: That is correct

26 MR. ESTEY: This quadrupling, I take it,
27 you attribute to largely two things: One is the intro-
28 duction of this disablement concept in the Act, or the
29 interpretation of the disablement concept

30 MR. DOUGLAS: I think this accounts for



1 a considerable part.

2 MR. ESTEY: And then I take it from your
3 brief, that you think the interpretation of the waiting
4 period as meaning "calendar days" whether or not the man
5 was scheduled to work, is also a large factor.

6 MR. DOUGLAS: Yes, this certainly has a
7 direct bearing on your compensation benefit.

8 MR. ESTEY: Dealing with the last one
9 first, because that is the order in which you dealt with
10 them, this waiting period has been discussed at some
11 length, but I am interested in the example you gave about
12 the statutory holiday which, by collective agreement, the
13 automotive manufacturers are required to pay the men --
14 he is paid then for not working: If he works on that
15 holiday, I take it you pay double time, or more serious
16 than that. In your example, if you are injured before
17 that statutory holiday came around -- and I use the word
18 as you use it in your collective agreement -- then I take
19 it that your waiting period would run right through that
20 day even though he is paid.

21 MR. DOUGLAS: Yes.

22 MR. ESTEY: That is your complaint. No
23 these things are a lot clearer to me if we take an
24 example: Let us take Dominion Day or Canada Day --
25 whatever it is called on the 1st of July -- if that day
26 fell on a Monday and the man is injured on a Friday, then
27 I take it there is no question that he is entitled to
28 compensation, even though he is back at work first thing
29 Tuesday morning; he gets compensation for the Monday;
30 is that your example of a double pay?



1 MR. DOUGLAS: Yes. In fact, if his
2 department were called in to work on the holiday on Monday
3 and he was not back, he would then be entitled to compen-
4 sation, because the Board counts the day of injury, if it
5 occurs before the half-shift time, as a whole day lost.

6 MR. ESTEY: So Friday morning he is hurt,
7 and then Friday is your first day to count?

8 MR. DOUGLAS: Yes.

9 MR. ESTEY: Saturday is a day, which
10 makes two days and Sunday makes three days?

11 MR. DOUGLAS: Right.

12 MR. ESTEY: He did not have to work on
13 Monday, but he got paid for it. Now, does he get compen-
14 sation for Monday in addition to the pay?

15 MR. DOUGLAS: Yes.

16 MR. ESTEY: So that is your example of
17 him getting paid twice?

18 MR. DOUGLAS: That is one example. The
19 other is this, that in our industry we, under Union
20 contract, pay the workman for the day of the injury,
21 regardless of what time in his shift he is injured, and
22 the Board takes no notice of that: The Board considers
23 that a lost day, if it is the whole day, or if it is past
24 his half-shift time -- at least they consider half a day.

25 MR. ESTEY: Let us break that down: The
26 Board counts that as a day against the waiting period
27 requirement of three days?

28 MR. DOUGLAS: Yes.

29 MR. ESTEY: But when they roll back to
30 the date of commencement of compensation, is he compensat



1 for that day?

2 MR. DOUGLAS: Yes.

3 MR. ESTEY: Even though he's paid in full
4 for that day?

5 MR. DOUGLAS: That is right.

6 MR. ESTEY: Now, the other fine point I
7 want to get into is that, under your collective agreement
8 as I understand it, the workman is not paid for that
9 statutory holiday unless he works either the day before
10 or the day after?

11 MR. DOUGLAS: Yes.

12 MR. ESTEY: So that the return to work
13 on Wednesday, in my example, he would not get paid for
14 the Monday, July the 1st holiday, by the company? I may
15 be wrong on that, but I am just asking you.

16 MR. DOUGLAS: I am informed that the
17 Union contracts now provide that if the injured workman
18 works in the week prior to the holiday and is injured in
19 that week, that he then gets paid the holiday if he is
20 off due to a work injury.

21 MR. ESTEY: So that there is a special
22 provision in your collective agreement about injury which
23 overrides the other requirement of working either before
24 or after the holiday?

25 MR. DOUGLAS: This is what I understand.

26 MR. ESTEY: Then, before we leave this
27 question, Mr. Douglas, on this example of your time
28 starting to run on Friday morning and you pay him for the
29 whole of Friday ...

30 MR. DOUGLAS: Yes.



1 MR. ESTEY: There may be a misunderstanding
2 here, but the Board has told the Commission, and if you
3 cannot answer this today, perhaps you will let us know:
4 The Board say that you are right in that you do count the
5 Friday as the first day of a day for the waiting period
6 requirement, but once the man qualifies for compensation
7 and then you go back to the beginning to compute the com-
8 pensation, that they do not pay him for the day off which
9 the employer pays him, even though he were injured. I
10 think that is a fair summary of Mr. Kerr's statement here

11 MR. KERR: That is correct, sir.

12 MR. ESTEY: Now, that is not the same as
13 your explanation this morning. It may be you would like
14 to check on that and let us know.

15 MR. DOUGLAS: Well, I would like to because
16 it has been our understanding that he has been paid for
17 that day and that we were told -- we raised this question
18 with the Board at the time this legislation came up and
19 we were told that the Board takes no cognizance of the
20 Union contracts and the provisions in there.

21 MR. ESTEY: That is why I asked you the
22 question. We just want to get to really what happens in
23 your industry and if you will be good enough to let us
24 know about that in the next few days, we would appreciate
25 it.

26 MR. DOUGLAS: Yes.

27 MR. ESTEY: Now, before I leave this
28 waiting period, I take it it is inherent in your brief
29 that you are proposing ---

30 MR. DOUGLAS: Excuse me, a letter has



1 just been handed to me, dated December 24th, 1965 from
2 the Board in respect of the payment of a particular claim,
3 and the letter reads:

4 "We have your letter of December
5 17th. Although this workman
6 received his full day's pay from
7 you for November 11, it does appear
8 that he was disabled for the better
9 part of November 9th, 10th and 11th.
10 As the workman was thus disabled for
11 two and a fraction calendar days, he
12 would be entitled to the payment of
13 compensation."

14 --- I am sorry, that does not quite answer the problem.

15 MR. ESTEY: That raises the same question.

16 MR. DOUGLAS: We will answer this later.

17 THE COMMISSIONER: On what date did that
18 accident happen in that letter?

19 MR. TUZ: The accident, in this case,
20 occurred on November the 9th and, as Mr. Douglas pointed
21 out, in the industry it is the practice to pay for the
22 day on which the accident occurred. So, the man was
23 paid for the 9th. On the 11th, was Remembrance Day,
24 again, for which the man was paid. So, the only day for
25 which he was unpaid was the 10th. In the portion of the
26 Board's letter, which Mr. Douglas read, it states that
27 the man was disabled the 9th, 10th and 11th and no
28 recognition was given to the Union agreement or practices
29 in the industry.

30 MR. ESTEY: Mr. Tuz, that raises the



1 very question we would like to discuss. There seems to
2 be no question that the three days for the working period
3 has been ticked off by the Board policy and so he becomes
4 eligible to receive compensation, but does your file
5 reveal -- and perhaps the company does not know --
6 whether when the compensation arrived it included com-
7 pensation for the Thursday, Friday period?

8 MR. TUZ: Yes, it included compensation
9 for the two days.

10 MR. ESTEY: That is exactly what we want
11 to know.

12 MR. TUZ: Yes, the amount of the cheque
13 is mentioned.

14 MR. ESTEY: So the upshot of that is that
15 at least with respect to the Thursday and the Friday,
16 that the man was paid twice -- or, at least he received
17 money in respect of those days from two sources?

18 MR. TUZ: Right. I don't want to drag
19 specific examples into the courtroom, but it was em-
20 barrassing to the man flashing his cheque in the plant
21 and saying "You make more money by staying home".

22 MR. ESTEY: What date is that letter?

23 MR. TUZ: December 17th, 1965.

24 MR. ESTEY: That is exactly why I asked
25 the question: If he made more money by staying home
26 and that were a wide-spread practice, then you would
27 probably have some insight into why the cost of your
28 accidents have gone up four times. That is your point?

29 MR. TUZ: Right.

30 MR. ESTEY: Then I take it, gentlemen,



1 that with respect to the waiting period, you are really
2 proposing two things ---

3 THE COMMISSIONER: Would you like to file
4 that letter, Mr. Tuz? Have you a copy available?

5 MR. TUZ: Yes, there are two copies here.

6 --- EXHIBIT NO. 9 Letters dated December 17th, 1965
7 and Dec. 24th, 1965 between P.J.
8 Tuz and Workmen's Compensation
Board.

9 MR. ESTEY: With respect to this waiting
10 period, you are really proposing two things, I take it:
11 One is that the Board get back to what you feel is the
12 true interpretation of Section 3 and that is, at least
13 three days.

14 MR. DOUGLAS: Yes. We cannot interpret
15 the words "at least" meaning anything less than.

16 MR. ESTEY: Perhaps I should advise you
17 the Board's basis for that interpretation is not oversight
18 or disregard of the words but what they are saying is that
19 they must go on and read, "from earning full wages".

20 MR. DOUGLAS: Quite, but that is our
21 point, that that man has been paid for that day so that
22 he is not, in fact -- he has full wages for ~~one day~~
23 day of injury. This, we take it, has an important part
24 too.

25 MR. ESTEY: Yes. And on the second part.
26 perhaps I am reading too much into your brief, and that
27 is why I am giving you the opportunity of confirming it
28 or denying it, I take it the industry is also saying that
29 the fairest way to measure the waiting period is with
30 reference to working days and not calendar days.



1 MR. DOUGLAS: When the period of compensa-
2 tion was reduced from five to three, this was a material
3 reduction, and the employers in several areas, requested
4 that this be reduced to working days.

5 MR. ESTEY: Yes, I can see that

6 MR. DOUGLAS: But the government passed
7 an amendment the next year which said that this will be
8 calendar days.

9 THE COMMISSIONER: I understand from a
10 member of the Board who has given testimony here, that it
11 has always been calendar days; their interpretation has
12 always been calendar days over the years, even though it
13 wasn't in the Act.

14 MR. DOUGLAS: In the longer seven-day
15 waiting periods and five days, this was true. When it
16 was reduced to three, it was felt this might better be
17 reduced to actual working days.

18 MR. ESTEY: And I take it that is the
19 present view of your Association, notwithstanding any
20 failure in the past to persuade the legislature to the
21 contrary?

22 MR. DOUGLAS: I think it would be their
23 view.

24 MR. ESTEY: And I take it that the reason
25 for adopting that view is the fact that we now have the
26 48 hour weekend, and frequently, with statutory holidays
27 appended to the end of that weekend.

28 MR. DOUGLAS: Yes.

29 MR. ESTEY: In your automotive industry,
30 I take it, that the workmen get two days off, Saturday



1 and Sunday or two other days if you are running on a
2 constant shift?

3 MR. DOUGLAS: Yes.

4 MR. ESTEY: They are working a five-day
5 week universally in your industry?

6 MR. DOUGLAS: They are not always working.
7 At times there are periods of overtime in our business
8 and this last several years we have been very busy and
9 there has been a great deal of overtime, this is true.
10 So it is usual we have a 40 hour work week and our over-
11 time premiums are based on that basis.

12 MR. ESTEY: They start at the 41st hour?

13 MR. DOUGLAS: Right.

14 MR. ESTEY: Now, moving along to this
15 second source of increase in accident costs for the
16 disablement type of accident, you deal with it in two dif-
17 ferent places in your submissions, which are very complete.
18 I am wondering if you have any suggestion as to how the
19 statute might be worded so as to remove from the claims
20 of accidents, those injuries or those conditions which
21 are due to the workman's physical condition and not, as
22 you say, due to his employment. I refer you to the
23 definition of accident, section 1 (a) of the Act, and
24 inquire as to whether or not you have had any deliberations
25 about how this statute might be worded to cut down on this
26 type of claim?

27 MR. DOUGLAS: I think it would have to be
28 a wording which would associate or tie the disablement
29 to the physical condition of the employee immediately
30 preceding the incident of disablement. I don't quite



1 know how else to suggest that.

2 MR. ESTEY: On page 5 of your brief you
3 say:

4 "disablement arising out of and
5 in the course of employment..
6 you say:

7 "where this permits entitlement
8 to compensation to an employee
9 whose disablement is wholly or
10 primarily due to his physical
11 condition and not the result of
12 a work injury or accident."

13 I take it that that is the heart of your submission, that
14 you would like either a definition put in the Act, or an
15 interpretation put into Board policy which will not entitle
16 a workman to compensation if the condition arises primarily
17 or wholly out of his physical condition and not linked in
18 some causal way to the work he has done for his employer?

19 MR. DOUGLAS: Yes. Perhaps my colleagues
20 here, could speak to this, but I do know that there are
21 instances in our experience in which workmen have reported
22 disablement, I couldn't call them injuries, because for
23 example, it is almost impossible to prove if you have a
24 headache or you haven't or whether your hip **hurts** or
25 whether it doesn't, but employees have been doing the
26 most casual thing and suddenly they have a disablement
27 in their shoulder or their neck or their back, you might
28 say reaching across the table to pick up a package which
29 weighs just several pounds. This leads to days of lay-off
30 which then qualifies them for compensation, and this, we



1 think, is most difficult to prove, to satisfy ourself that
2 there had been nothing unusual, no strain, no slip, no
3 fall - nothing that would suggest an unusual circumstance
4 of injury and our safety people and our medical people
5 can only attribute it to something which must primarily
6 stem from the person's physical condition just prior to
7 the time. Perhaps Mr. Ives or Mr. Tuz would like to
8 speak to that.

9 MR. TUZ: As Mr. Douglas pointed out,
10 cases sometimes involve something extremely minor which
11 you would really have to use your imagination to attribute
12 to the actual work the man performs and, in many cases,
13 the Board accepts the statement, as was pointed out
14 earlier, without investigation. As a matter of fact, I
15 could read a number of letters sent by the Board saying,
16 "We are accepting so-and-so's statement that the accident
17 occurred as he reported". This ties in very closely
18 with the reference Mr. Douglas made to small claims which
19 are accepted almost on demand, simply for expediency. A
20 matter is, in one case, \$75 and a letter we get back says,
21 "It would cost us more to look into the claim thoroughly".
22 In any event, as small as the claim is, it does establish
23 a precedent and you can return years hence and make
24 reference to this claim number.

25 THE COMMISSIONER: Well, in those small
26 claims does the Board make no investigation?

27 MR. TUZ: In many cases, no, you are right,
28 sir.

29 THE COMMISSIONER: They do not communicate
30 with the employer or anybody?



1 MR. TUZ: Well, with the employer, insomuch
2 as they receive it from the employer.

3 THE COMMISSIONER: Well, they don't do
4 that in any more than 99 per cent of their claims, do they?
5 They don't send out someone to investigate every occasion,
6 it is all done by telephone, is it not?

7 MR. TUZ: When the employer objects to a
8 claim and presents an argument, then the Board takes the
9 trouble to send an investigator out and actually examine
10 all details of the claim.

11 THE COMMISSIONER: But otherwise it is
12 done by communication, by teletype or telephone and then
13 the report of the Board and the report of the doctor?

14 MR. TUZ: I think we should also clarify
15 that the vast majority of claims are, of course, genuine
16 and the employer would support these claims. We are
17 speaking of the doubtful claim.

18 THE COMMISSIONER: The thing I am trying
19 to get at is, when you say these claims are not investi-
20 gated, are paid automatically, well, is there any difference
21 between the routine that is gone through in connection
22 with those and in connection with any other claim as far
23 as communicating with the employer and obtaining a medical
24 report if there is one?

25 MR. TUZ: Yes, there is a difference.
26 Not as far as communication from the employer's side is
27 concerned, but as far as communication from the Board is
28 concerned. If the claim involved a greater amount, the
29 Board will consider investigation and will investigate
30 the case and then, either confirm payment or deny the



1 claim. But in cases where the Board feels the amount does
2 not warrant it, the claim is paid automatically. This is
3 the danger because it does establish precedents.

4 THE COMMISSIONER: I don't know whether
5 Mr. Estey is or not, but I am still not clear. Do they
6 do any investigation at all in connection with these
7 small claims?

8 MR. TUZ: Not in our experience.

9 THE COMMISSIONER: They don't ask you for
10 a report or a medical report or anything?

11 MR. TUZ: Well, the routine reports such
12 as the form 7 report, yes.

13 THE COMMISSIONER: They do ask for a
14 report?

15 MR. TUZ: Well this is the notification
16 to the Board, it is automatic.

17 THE COMMISSIONER: How much more do they
18 ask for in the other cases?

19 MR. TUZ: In the other cases, in cases
20 where doubt exists --

21 THE COMMISSIONER: Oh, yes, I know.

22 MR. TUZ: Where the employer has brought
23 it to the attention of the Board, they ask for sworn
24 statements from the witnesses.

25 THE COMMISSIONER: But in 99 per cent of
26 the cases they don't, at least I am told it is some high
27 percentage, anyway. Then, as far as that 99 per cent are
28 concerned, the small claims are dealt with just as the
29 others?

30 MR. TUZ: You are correct. Most claims



1 an employer would not object to, because they are genuine
2 claims. We are only speaking of the claims that an
3 employer does object to because he has definite indication
4 that this man made a fraudulent claim.

5 THE COMMISSIONER: Well, if you made an
6 objection to a small claim, would they not be investigated.
7 then?

8 MR. TUZ: They don't, no.

9 THE COMMISSIONER: That is your point?

10 MR. TUZ: That is right.

11 THE COMMISSIONER: Even if you object to
12 the small claim, there is no investigation made?

13 MR. TUZ: That is correct.

14 THE COMMISSIONER: I think I understand
15 you now.

16 MR. ESTEY: I take it, from what you are
17 saying, apart from what they do or don't do at the Board,
18 that you have two aspects of this case in mind when you
19 make your submission. One is that the cost of paying the
20 small claims is serious because there are so many of
21 these small claims and therefore, if you encourage them
22 by an administratively efficient way, and pay them all,
23 then you run the accident cost up, that is your first point,
24 is that right?

25 MR. TUZ: Not the strongest point. This
26 is actually a minor point.

27 MR. ESTEY: The second point is - I am
28 not using your words, but I am trying to understand it -
29 that you are saying that such a practice has a moral
30 affect on your employment because honouring these small



1 claims, giving a route for some future big claim, allowing
2 someone to profit, perhaps in the circumstances Mr.

3 Douglas described, running the illness at a profit, that
4 this has a big moral factor. You also have that in mind?

5 MR. TUZ: It also has a financial factor.

6 MR. ESTEY: Yes, I put that one first. The
7 financial factor was the first comment and the second is
8 that it has an affect on your employees.

9 MR. TUZ: Yes.

10 THE COMMISSIONER: I had rather gathered
11 from your brief that you were prejudiced in another way
12 in that if a subsequent claim for compensation were made
13 a long time afterwards, the fact that this had been accepted
14 by the Board at that time, precluded your raising the
15 question then, or doing anything about it.

16 MR. TUZ: That is correct.

17 THE COMMISSIONER: In other words, again
18 you are referring to the cases where you objected and the
19 Board refused to investigate. Had you objected, they might
20 have found circumstances that might have stopped this
21 subsequent routine?

22 MR. TUZ: Stopped the original claim.

23 THE COMMISSIONER: Then the original claim
24 couldn't be used for a subsequent claim.

25 MR. TUZ: That is right.

26 MR. ESTEY: On this question of disablement,
27 which is related to what we are talking about, we have
28 heard quite a bit, Mr. Tuz, up to now, about the increas-
29 ing frequency and the seriousness of back injury claims.
30 Now, does the automotive industry experience this same



1 increase in the last three or four years, of that type of
2 claim which you might call a back claim?

3 MR. TUZ: I believe we do. I don't have a
4 break-down of figures with me but I believe we do experience
5 that.

6 MR. DAUGHARTY: We do, yes.

7 MR. ESTEY: The answer to that, from
8 American Motors' brief, the viewpoint is yes?

9 MR. DAUGHARTY: Yes.

10 MR. IVES: The general feeling, without
11 confirming, is that it is much higher.

12 THE COMMISSIONER: All you know is that
13 you have had this enormous increase in assessment and it
14 must be due to something and you give three possible
15 choices which, probably, the Board can nail down and
16 identify how much is due to any one particular thing that
17 accounts for this increase. We can, perhaps, get it from
18 another source.

19 MR. ESTEY: Do you have pre-employment
20 medical examinations?

21 MR. TUZ: Yes, we do.

22 MR. ESTEY: And in the course of those
23 examinations, I take it that it is a comprehensive examina-
24 tion and the back is considered?

25 MR. TUZ: I don't know how well the back
26 can be examined. I am afraid I am not a member of the
27 medical profession but I think, mainly, or quite a bit
28 of this comprehensive medical examination depends on an
29 individual's honesty about his former medical history,
30 past medical history.



1 MR. ESTEY: Do you Xray them?

2 MR. TUZ: Yes, chest Xrays.

3 MR. ESTEY: Just chest Xrays?

4 MR. TUZ: Just chest Xrays.

5 MR. ESTEY: In the automotive industry,
6 is the type of work which is done on the assembly line
7 what you would call heavy labour, or heavy work which one
8 might associate back injury with, or would you classify
9 it as light work?

10 MR. TUZ: I would classify it as moderate,
11 because wherever lifting devices, for instance, can be
12 installed, they are installed. You can't compare this
13 to, say, the construction industry where men are on the
14 job site for a short period only. These plants are per-
15 manent and we do install lifting aids wherever possible.
16 So I would say that on the average, the maximum weight a
17 man would like in an automotive plant, would be 50 pounds.

18 MR. ESTEY: That would be the maximum?

19 MR. TUZ: Yes, I would say in that vicinity,
20 give or take five.

21 MR. ESTEY: I take it from your answer
22 that the men are working with highly automated tools that
23 results in lighter weight work?

24 MR. TUZ: Yes, the automotive industry is
25 one of the most automated industries.

26 MR. ESTEY: I don't know which of you
27 gentlemen wish to discuss this with us, but you deal with
28 the notice of injury at page six. You have a reference
29 to section 21 of the Act. What do you do when a man does
30 not report the accident? Do you have any procedure you



1 put him through? You cannot discipline him, obviously,
2 because the Act says that you may not enter into a
3 collective agreement or anything which will reduce his
4 entitlements. What does the employer do to try to encour-
5 age the reporting of accidents?

6 MR. DOUGLAS: We, of course, post the
7 necessary signs in our place of work. In many instances,
8 too, we supplement this with all sorts of campaigns which
9 are usually carried through the safety department, that
10 when you have an injury, be sure to report it promptly to
11 your foreman. The way to get to people, basically, on
12 safety is through their immediate supervision. There
13 is nothing that supplants this, as far as direct line and
14 observation and contact. I think every reasonable effort
15 is made to inform the employee, new and old, that this
16 be fore.

17 MR. ESTEY: What you are saying in your
18 brief, in effect, that unless the Act denies them some
19 kind of entitlement, that there really is not any penalty
20 for non-reporting.

21 MR. DOUGLAS: This seems to be so.

22 MR. ESTEY: Then you say that someone is
23 advising the workman not to go to his employer or to
24 report to the medical doctor or first aid supplied by the
25 employer, but rather, to go to his own doctor. I am
26 wondering to whom you are referring when you say that in
27 some quarters, workmen are being advised not to go to the
28 medical doctor or the first aid treatment maintained by
29 the employer. Who would be so advising the workmen?

30 THE COMMISSIONER: We would have to draw



1 our own conclusions on that one.

2 MR. DOUGLAS: Our members have reported
3 this as being advised by their legal representatives.

4 THE COMMISSIONER: Mr. Douglas, they might
5 feel they did not want to go to what they considered to
6 be a company doctor and would prefer to go after their
7 own, but how does that affect the reporting? They don't
8 have to go to this first aid place -- they could go to
9 their own doctor, but they could still report it.

10 MR. DOUGLAS: They have every right, under
11 the Act, to go to whatever doctor they choose. We would
12 not, in any way, argue with that. What we need to know
13 and what is a fair thing to ask, is that when the employee
14 feels he is injured, he has had a tumble or an electric
15 shock or he is burned or he cuts himself, if he would
16 just tell our people, tell somebody in responsibility
17 immediately, that this has happened. But there are re-
18 peated cases cited by committee members, where employees
19 say nothing, that they do not show up for work on Monday
20 or Tuesday, let us say, or the next day, and they do not
21 get in touch with the employment office or the department
22 or the company; they just do not report. Well, with a
23 very large number of employees, it is very difficult to
24 immediately contact, that day, Mr. Brown or Mr. Smith or
25 someone else to find out what the trouble is. It is just
26 the same way that employees will often move without tell-
27 ing you where they are now located. Even if you did this,
28 you would not be able to contact them all, even if you
29 used your best efforts. You don't know what has happened,
30 and if the man goes one, two or three days, then you get



1 into it, because there is a place in his work place where
2 he is missed and somebody has to be doing his work. You
3 just can't make cars and leave the odd wheel off or the
4 odd door off.

5 .MR. ESTEY: That is not good policy, I
6 take it. I suppose you either find out from the Board,
7 for the first time, that the man has been injured in
8 those cases, or, as you say, you have gone to find out
9 why he is not at work and then you find out that he was
10 in an accident, and this is your problem?

11 MR. DOUGLAS: Yes, this is the problem.
12 It is normal to see the doctor to perhaps enquire as to
13 how this happened.

14 MR. ESTEY: On that point, do you maintain
15 in any of your four plants, a doctor?

16 MR. DOUGLAS: Yes, most of our firms do.
17 We are required to do it with the number of employees we
18 have.

19 MR. ESTEY: A workman, who is injured on
20 the premises, can if he wishes, go to the doctor on the
21 premises, but he does not have to do that. All you want
22 him to do, whether or not he does that, is let you know
23 whether or not he has been hurt.

24 MR. DOUGLAS: If he would tell someone --
25 a watchman, or even a fellow employee might do, but as a
26 rule in many instances, we can find no one who has seen
27 or had any indication from the man who claims he is
28 injured, that he was injured at work.

29 MR. ESTEY: In Section 21, (1), dealing
30 with "Notice" -- this is what I was leading up to -- the



1 requirement is as follows, that compensation is not payable
2 unless notice of the accident is given as soon as practicable
3 after the happening and, secondly, before he leaves his
4 place of employment, and, thirdly, unless the claim is
5 made within six months of the happening of the accident,
6 What you are saying is that that is wishful thinking to
7 so do that?

8 MR. DOUGLAS: Yes.

9 MR. ESTEY: And you say that section 21
10 (1) should have the statement that, unless he notifies
11 the employer that he has been injured, no compensation
12 is payable until he does notify them?

13 MR. DOUGLAS: We think this is a fair
14 basis of putting more onus on his responsibility. The
15 Board is, apparently, waiving the fact that he does not
16 report.

17 MR. ESTEY: Then, secondly, dealing with
18 subsection 5, you are quite willing to modify that rather
19 strict provision if the Board finds the circumstances
20 were such the man could not reasonably have notified the
21 employer?

22 MR. DOUGLAS: Right.

23 MR. ESTEY: And in an assembly line
24 operation, it is rather difficult to see how that would
25 arise because, I suppose, if a man were disabled and
26 could not notify anybody, then everybody around him would
27 know of the injury.

28 MR. DOUGLAS: Not necessarily.

29 MR. ESTEY: I would like to think your
30 supervision is closer than that. If somebody got hurt



1 and fell on the floor, surely it would become apparent to
2 the next man down the line that the wheel is not on.

3 MR. DOUGLAS: Mr. Tuz will speak to this
4 for a moment.

5 MR. TUZ: The only reason I wanted to raise
6 a point is because there are many cases where the injury
7 does not occur in the plant. The current interpretation
8 of the Act honours an injury which occurs on the way to
9 or from work, and sometimes the man never reaches the
10 plant. Now, I can think of instances that occurred on
11 company parking lots, or that occurred, we will say, when
12 an individual took a shortcut across a company parking lot
13 where he did not park his car.

14 MR. ESTEY: What does the Board do with
15 those cases?

16 MR. TUZ: Accepts them.

17 MR. ESTEY: On the theory that the man is
18 at work?

19 MR. TUZ: On the theory that the incident
20 arose under the condition of employment.

21 MR. ESTEY: What about your earlier
22 statement, a moment ago, that he is hurt on the way to
23 work; does the Board, in your practice, recognize a
24 claim when a man gets hurt on his way down to work?

25 MR. TUZ: Yes, I have evidence of this
26 with me.

27 THE COMMISSIONER: Before he reaches the
28 parking lot -- out on the highway?

29 MR. TUZ: No, I am referring to individuals
30 who are injured on our parking lot but who do not have



1 any business on this parking lot.

2 THE COMMISSIONER: Would you go any
3 further than that -- That is what Mr. Estey is asking you.

4 MR. TUZ: Depending on which side of the
5 fence they fall on?

6 MR. ESTEY: Outside on the road -- back
7 before he gets to the company property, do you have any
8 claims where the Board recognizes them?

9 MR. TUZ: No.

10 MR. ESTEY: But starting on the company
11 property, your point is that before he gets into his
12 position on the assembly line, or wherever he works, but
13 on the premises, he is hurt and then the Board recognizes
14 that as a claim arising out of his employment?

15 MR. TUZ: Yes, but it does not necessarily
16 have to be on plant premises. In other words, in the
17 plant in which he works. It could be in the parking lot.

18 MR. ESTEY: You mean not a company parking
19 lot?

20 MR. TUZ: Oh, yes, I mean a company park-
21 ing lot.

22 MR. ESTEY: Well, when I say company
23 premises, I don't mean the part where he works, but land
24 owned by the company.

25 MR. TUZ: Yes.

26 MR. ESTEY: And the Compensation Board
27 recognizes a claim when he is hurt on those premises, but
28 your point, and Mr. Douglas' point is that you may not
29 get notice of that accident because there is nobody
30 around?



1 MR. TUZ: That is right, and because the
2 man turns around and goes home.

3 MR. ESTEY: But that would not be a
4 circumstance, I take it, that the Board should not waive
5 the requirement of notice.

6 MR. TUZ: No.

7 MR. ESTEY: My question was directed to
8 subsection 5 and it is: How far do you recommend the
9 statute go in empowering the Board to release the workman
10 from the obligation to give notice?

11 MR. TUZ: We feel, number one, that this
12 injured employee, whether he goes home or to the plant,
13 could pick up the telephone, or have someone pick up the
14 telephone and notify his employer. Number two, if he
15 fails to do so, the Board, at the present time, of course,
16 does not pay the man until he makes his report, simply
17 because it has no knowledge of the claim. He can't very
18 well pay the man until he makes his report. But it does
19 pay him at the time he makes his report retroactively.

20 MR. ESTEY: To the accident?

21 MR. TUZ: Right, and we feel that in order
22 to discourage this failure to report that this retro-
23 active payment should not be made, unless, of course,
24 there are reasonable grounds where the man could not
25 notify his employer, in which case this would have to be
26 waived.

27 MR. DOUGLAS: Excuse me, Mr. Daugharty
28 has a tabulation of the number of late reports.

29 MR. ESTEY: This is American Motors?

30 MR. DAUGHARTY: Yes, this is American



1 Motors. This problem of late reporting came up last
2 December, so our safety man made an analysis of how many
3 claims were being late reported, and we found that for
4 January, February, March of 1966, 18 per cent were not
5 reported at the time of the accident. The company was
6 notified at some later date that there had been an accident.

7 MR. ESTEY: Mr. Daugharty, in those cases,
8 does the Workmen's Compensation Board, in the experience
9 of your company, take the lateness of reporting into
10 account in determining whether or not the accident, in
11 fact, happened and the circumstances covered by the Act?

12 MR. DAUGHARTY: I am sorry, I cannot
13 speak from that end of it because I don't actually file
14 the claims or have anything to do with that end of it,
15 but we have a detailed analysis of these late claims here.

16 THE COMMISSIONER: I suppose there is
17 nothing to say whether it is the day after the accident
18 they reported it or a week.

19 MR. DAUGHARTY: We have those days. Take
20 this one: left eye, foreign body and the employee says
21 it occurred on February the 18th and he reported it on
22 February the 22nd. We have a few of these foreign bodies
23 in the eyes. We have anything from one day -- a right
24 knee sprain where the employee stated it occurred on
25 January the 20th and he reported it the next day, January
26 the 21st. We have pulled out all possible excuses from
27 this report for not reporting on time. These, we feel,
28 were genuine cases which could have been reported the
29 day the accident happened.

30 THE COMMISSIONER: In other words, these,



1 you say, are whittled down to ones that could have been
2 reported at the time of the accident.

3 MR. DAUGHARTY: Yes.

4 THE COMMISSIONER: But when you give the
5 18 per cent, that includes all non-reports, does it?

6 MR. DAUGHARTY: Yes, it would include all
7 late reports.

8 THE COMMISSIONER: These examples that
9 you have are the ones that there was no excuse for not
10 reporting?

11 MR. DAUGHARTY: These are ones that had
12 no excuse for not reporting according to the timing. The
13 timing is here when they were reported.

14 THE COMMISSIONER: It might be helpful if
15 we had that.

16 MR. DAUGHARTY: You see, "right foot and
17 ankle". The employer stated it occurred on March the
18 15th at 3:15 p.m. The employee was still in the plant,
19 he must have been still in the plant, but he reported it
20 on March the 16th at 8:35. We only have one natural
21 supposition, the employee goes home and he is out playing
22 ice-hockey, or something like this, and he comes back in
23 the next morning and he goes and says that it happened
24 at work the last day.

25 THE COMMISSIONER: But he didn't come
26 back in, did he, on the day of the accident?

27 MR. DAUGHARTY: He reported the accident
28 on the next day.

29 MR. ESTEY: Did he do that by phone from
30 the hotel, or did he come to work?



1 MR. DAUGHARTY: I don't have that infor-
2 mation here.

3 MR. ESTEY: Are you the only one of the
4 four who has such a statement?

5 MR. DAUGHARTY: I believe so. We, of
6 course, naturally, at our meeting, got into an argument
7 about this so our safety boys said, "Well, we will analyse
8 this and just find out how many are reporting late".

9 MR. ESTEY: Mr. Daugharty, would it be
10 fair and reasonable for us to ask if you could make a
11 summary of that and file it with us? I see you have a
12 lot of names involved on that claim.

13 MR. DAUGHARTY: We also have the claim
14 numbers.

15 MR. ESTEY: Could we have that?

16 MR. DAUGHARTY: I will see that you get
17 a copy of that.

18 MR. ESTEY: I see you are the Chairman of
19 this Workmen's Compensation Committee. Do you have the
20 figures for the four manufacturers for the number of
21 claims which are filed each year, or last year? What
22 volume are we talking about, how many claims do you have
23 a year, American Motors?

24 MR. DAUGHARTY: I wouldn't have any idea.

25 THE COMMISSIONER: Do any of you have any
26 idea how many claims you are talking about?

27 MR. DOUGLAS: We could get it, I think.

28 MR. ESTEY: The reason I asked is I assume
29 it would be a large number from the pay-outs. I was
30 wondering whether or not you have officers whose sole job



1 or principal duty is to investigate these claims, keep
2 track of them?

3 MR. DAUGHARTY: They are all recorded and
4 listed. Every employee has a card which, if he is injured,
5 it is marked right at the time he reports it to first aid.

6 MR. ESTEY: In the case of several of you,
7 I suppose, you employ several thousands of men. I am
8 wondering how the companies are organized to investigate
9 these claims when you get notice of them. How do you do
10 it?

11 MR. DAUGHARTY: I am not on that end of
12 it but we have a doctor and several nurses and we have a
13 safety man and just, say, a routine cut, the employee
14 would go in to the doctor to have it fixed up, but
15 supposing there were some element of safety concerned
16 where this man is off the job and another man has to
17 replace him on that job, then the safety man certainly
18 wants to know why was that employee injured, and if we
19 put another man in that spot, is he going to be injured
20 too. These things are endeavoured to be investigated
21 right at once or otherwise, you are going to have another
22 accident.

23 MR. ESTEY: Yes, thank you, Mr. Daugharty.

24 MR. TUZ: Just to give an example of this
25 in our case, our company employees, the Workmen's Compens-
26 sation Act Administrator and the Safety Administrator,
27 and in addition to this, in each plant we have safety
28 engineers and the ratio is approximately one plant safety
29 engineer for 750 men and these safety engineers have a
30 dual function. They investigate an accident from the



1 point of view of corrective action to prevent its repeti-
2 tion and they also act as the investigating arm of the
3 Workmen's Compensation Administrator. The Workmen's
4 Compensation Administrator studies both the Workmen's
5 Compensation Board's form 7, which is completed by a nurse,
6 usually, or by the person receiving the call, and carries
7 the man's statement, although it is entitled, "Employer's
8 Report". It is basically an employee's report.

9 The plant safety engineer completes a
10 separate report independent of this employer's report form
11 7, and the Safety Administrator and the Workmen's Compensa-
12 tion Administrator, compare these two reports. If they
13 are not compatible, they look into it further and action
14 is decided after that.

15 MR. ESTEY: So you are saying that you
16 have an accident investigating machine set up and that
17 this machine can't function if you don't get notice of
18 the accident promptly after it occurs?

19 MR. TUZ: That is true.

20 MR. ESTEY: I take it that is true of
21 the other three manufacturers as well as yourself?

22 MR. TUZ: Pretty well.

23 MR. ESTEY: One last question, Mr.
24 Douglas. When you came to the part of your brief headed,
25 Medically Approved Work, you said you had another member
26 who wished to speak on that subject. Do you wish to do
27 that now?

28 MR. DOUGLAS: Yes, Mr. Tuz.

29 MR. TUZ: I think Mr. Douglas, in his
30 general statement referred to medically approved work,



1 approved by a physician. In many cases we have an employee
2 who may be extremely valuable. He is familiar with the
3 machines, the particular machine that he is producing on,
4 and he may have injured his left thigh or his left thumb
5 and can't operate the machine himself, but there may be
6 a job for him in the interim period to supervise a new
7 employee on that particular piece of equipment. So, in
8 many cases, lost time is really not necessary. Under the
9 Board's varying interpretations in the past we have found
10 ourselves with medically approved work being considered
11 acceptable by the Board in some cases and, in other cases,
12 it had no bearing because it was not the man's regular
13 job.

14 The latest interpretation with which we
15 are faced is that we are to advise the man's physician
16 and our company physician and if both of these agree and
17 the employee agrees, then interim work is permissible.

18 THE COMMISSIONER: I gather that the
19 Board put the pressure on to get people back to work if
20 they were temporarily, or partially disabled and were
21 able to do some work - that they encouraged him and paid
22 him something for his temporary, partial disablement and
23 allows him to work, or asked him to work.

24 MR. TUZ: I have a letter here which came
25 to us from the Board, in reply to the suggestion that a
26 position was available for a particular individual and
27 the Board's statement says:

28 "One must also take the position that
29 the physician employed by the company,
30 would show prejudice in favour of the



company."

And that was the end of it. As a matter of fact, in the same letter, of course, the Board also suggested that the claim, being so small, it would be paid, and I would like to enter this letter as evidence.

THE COMMISSIONER: Are you talking about cases then where he is partially disabled but he is getting full compensation and he is not sent back until he is completely recovered?

MR. TUZ: That is correct.

THE COMMISSIONER: Unless he gets some permanent allowance for the partial disability.

MR. TUZ: That is right.

EXHIBIT NO. 10

Letter from The Workmen's Compensation Board, to Chrysler, dated May 11th, 1966 re.claim no. 06704347.

THE COMMISSIONER: I think, if you are nearly through, Mr. Estey, we will adjourn if you are not going to be too long.

MR. ESTEY: I just have a couple of questions.

Does your company attend when appeals are being heard by the different levels of appeal you are talking about?

MR. TUZ: Yes.

MR. ESTEY: Have you had any experience where the companies have appealed assessments by the Board not on questions of claim recognition - has the company appealed any assessments by the Board on ratings, classifications, change in the rate of 306?



1 MR. DOUGLAS: We have discussed, when the
2 Board proposed to add to include or transfer to our group,
3 the bus manufacturers, they informed us of it and we
4 discussed it and commented. We were concerned, let us
5 say, for this reason; that the bus manufacturers were
6 not members of our association and we feel we have a
7 very valuable contact in the association with common
8 safety problems, among others and we were concerned
9 that our group would be enlarged to the extent that we
10 were not getting to other employers in our group but,
11 regardless of this, the Board decided this was what they
12 wished to do and they proceeded but they did discuss it
13 with us and we have very good liason with the Board.
14 They have been very helpful and are always willing to
15 discuss problems.

16 MR. ESTEY: I just have one more last
17 question, Mr. Douglas. On page 5 you say that, "where
18 pensions have been retroactively adjusted", you believe
19 that this constitutes social legislation? I am reading
20 from the second paragraph on page 5, the very last
21 sentence. Do you have any comments to make or explain
22 why you think the retroactive adjustment of the workman's
23 pension entitlements where he has been injured on the
24 premises of the employer in question, would be described
25 as you have described as social legislation, rather than
26 ordinary workmen's compensation benefit?

27 MR. DOUGLAS: Well, the simple facts are
28 that the employers alone are not responsible for the
29 increased cost of living as we experience it over a
30 period of time. They, no doubt, have a part in it as



1 well as many other factions of society. The Board pointed
2 out at the time this last adjustment was made, that there
3 were pensioners dating back in the teens, who had amputa-
4 tions or other disabilities and the allowances they made
5 were within the provisions of the Act, and, apparently
6 adequate under that practice. They were now updated. It
7 is reasonable to say that quite a number of the employers
8 of that period were no longer there, so the following
9 employers are charged with those costs.

10 I think it fair to say that it was felt
11 by employers that this is a cost that society, as a whole,
12 should help provide. To that extent it is a form of
13 social benefit.

14 MR. ESTEY: Community benefit.

15 MR. DOUGLAS: Yes.

16 THE COMMISSIONER: Mr. Douglas, some of
17 those who have talked to this commission have felt that
18 they have found themselves in the situation, as represent-
19 ing the industry who, when they want to contest a claim,
20 were having to go down as representing their particular
21 company and fight the claim on the appeal before the
22 Board and they felt that they should not be put in that
23 position, that the Board should perhaps call all evidence
24 and subpoena what ever witnesses were necessary and they
25 should not have to appear to contest it. I was wondering
26 about another alternative. Have you any opinion about
27 having a permanent representative on the appeal
28 board to represent the employer at those hearings because
29 usually there is somebody representing the employee, would
30 that solve that problem to any extent, the fact that -



1 maybe in your bigger companies it does not concern you so
2 much but in the smaller one they feel it hurts their
3 employee relations to be going down there and fighting a
4 claim.

5 MR. DOUGLAS: Well, I can understand their
6 feeling. I really think, though, that the best job can
7 be done by someone who is directly familiar with the
8 circumstances. I think our people would react that way.
9 I think we would individually, if we feel that the claim
10 is not right, that there is something wrong with it, that
11 we would do best in our own interest.

12 THE COMMISSIONER: Thank you.

13 MR. ESTEY: Thank you very much, Mr.
14 Douglas.

15 THE COMMISSIONER: None of you other
16 gentlemen have anything further to say, I take it?

17 Thank you very much.

18 We will adjourn for ten minutes.

19 --- A short recess.
20

21 MR. ESTEY: Gentlemen, we are now going
22 to proceed with the notice items which were sent out on
23 the 23rd of September. The first item to be taken up
24 today is Benefit Payments and Rates of Compensation, in-
25 cluding five items: Compensation and Salary Ceilings,
26 Partial Disability Allowances, Adjustment for increases
27 in Cost of Living, Fatal Claim Benefits, Retroactivity
28 of Increases in Benefit Payments. These topics have been
29 dealt with, Mr. Commissioner, in a number of briefs, and
30 in order to proceed through them in a manner which will



1 give some people an idea of when they will be reached, we
2 propose to do so alphabetically.

3 The first brief which has a reference to
4 these topics, is that of the Automotive Transport Associa-
5 tion of Ontario. I do not think they are here today.
6 We have been asked by their general counsel to come to
7 them later in the order of briefs.

8 The next one, which has a reference to one
9 of these topics is the submission filed with the Commission
10 by The Bell Telephone Company of Canada. I saw Mr. Arnold
11 here this morning.

12 The next one is the Board of Trade and
13 that deals with two of these matters. Mr. O'Connor is
14 not here this morning.

15 Then we come to the Canadian Manufacturers
16 Association.

17 THE COMMISSIONER: Has the Board of Trade
18 one been read in, or what do you propose to do about it?

19 MR. ESTEY: The same procedure as we have
20 on the first three topics. We will hear those who are
21 here, if you are agreeable, and then when we have finished
22 the live presentations, we will read them in, otherwise
23 we will have people who are here, held up while we read.
24 The Canadian Manufacturers' Association have asked to be
25 put to the bottom of the list and perhaps we can reach
26 them tomorrow.

27 The next one dealing with the subjects is
28 the International Nickel Company, and they have some
29 statistics which they want to put together in a different
30 way than they are in now, and they will be reached later.



1 I missed one, Mr. Commissioner: I checked
2 the brief and they did not notice they had a reference to
3 this in it, and that is The Canadian National, Canadian
4 Pacific, et cetera, Railways. They have a reference to
5 maximum earnings and percentage of compensation rates.

6 Then, The City of Toronto refers to benefits.

7 Then, I come to the International Railway
8 Brotherhoods: They have not presented their brief as yet
9 and we will read that one in.

10 The International Union of Mine, Mill and
11 Smelter Workers, referred to a number of these topics and
12 we have Mr. Kennedy with us this morning.

13 MR. KENNEDY: Mr. Commissioner, the points
14 in our brief, which deal with the matters before the
15 Commission this morning, start at page 7, at the bottom
16 of the page, entitled "Death Benefit".

17 It is our opinion that the schedule of
18 benefits presently paid in the case of the death of a
19 workman arising out of an accident in his employment is
20 totally inadequate to meet even a bare subsistence level.
21 While it is true that no monetary payment can compensate
22 for the loss of a parent, we submit that the stability
23 of the family and the maintenance of the standard of
24 living prevailing at the time of death is completely
25 justified. We, therefore, recommend that where the
26 household is maintained, that the widow, or an invalid
27 husband, or the foster mother, as the case may be, should
28 be paid 100 per centum of earnings prevailing at the
29 time of death.

30 Where the dependents are children and the



1 household is not maintained, a payment of \$75.00 per month
2 to each child, until such child's education is completed.

3 THE COMMISSIONER: Do you want to deal
4 with these points individually?

5 MR. ESTEY: It does not matter, Mr.
6 Commissioner -- perhaps it would be better.

7 THE COMMISSIONER: Then I can relate them
8 to my notes on the cross-examination.

9 MR. ESTEY: So, we will understand the
10 impact of what you are saying, Mr. Kennedy, with respect
11 to section 37, Death Benefits, you are saying that the
12 widow, if that is the beneficiary, or survivor, should
13 get 100 per cent of the earnings at the time, instead of
14 \$75 per month, which is now in section 37 (1) (c), and
15 some other benefits?

16 MR. KENNEDY: Yes.

17 MR. ESTEY: I take you are saying that
18 100 per cent of the earnings, subject to the overall
19 ceiling under the act, in the same way that a permanent
20 disability has a ceiling?

21 MR. KENNEDY: Yes, it is contained in
22 our brief in this manner, because we are at the same time
23 taking the position that there should be 100 per cent of
24 earnings paid in the event of total disability.

25 There are a number of reasons why we say
26 that the widow should have a payment at least equal to
27 what her husband, the claimant, might have if he is
28 totally disabled as a result of accident.

29 It is our submission that if a workman is
30 receiving 100 per cent compensation, that is, 75 per cent



1 at the moment of earnings, and he dies as a result of the
2 injury, that the financial burden upon the widow becomes
3 greater instead of less. It is a well known fact that if
4 a man is hale and hearty, that there are multitudes of
5 things that he does around the home, things that if he were
6 to hire a tradesman to do, would cost money. However, he
7 assumes that responsibility as part of his general home
8 making and housekeeping contribution. If the provider, the
9 husband, dies, then the widow has to hire someone to do many
10 of the chores that have to be done around the house, some
11 things that are just beyond the scope of a woman.

12 Therefore, for these reasons, we say that
13 there should be no reduction in the amount which was being
14 received as compensation when the husband was still alive.

15 MR. ESTEY: Mr. Kennedy, on that same
16 point, just to make sure we have your submission, you are
17 saying it should be 100 per cent and not \$75. You will see
18 that in the present statute, the compensation was increased
19 by \$40 a month for each dependent child, and you are sug-
20 gesting that \$40, in the light of today's circumstances,
21 should be increased to \$75?

22 MR. KENNEDY: Yes, I should make it clear
23 in that respect, that depending on the size of the family,
24 75 per cent may be equitable. Of course, if there are a
25 sufficient number of children in the family, we feel that
26 this is a minimum amount that would be necessary if they
27 were in foster homes to maintain them for a month, but we
28 are faced with the reality of the situation that if there
29 are a sufficient number of children being maintained in
30 foster homes, then that could, in fact, amount to more



1 than what 100 per cent of compensation would be.

2 MR. ESTEY: Then the Act goes on to provide
3 a maximum which, I take it, is what you are really saying
4 should be the minimum, that is to say, Subsection 3 of 37
5 where it says the amount shall not in any case exceed the
6 average monthly earnings of the workman. What you are
7 saying is that the average monthly earnings of the workman
8 should be the basis of the compensation to the widow.

9 MR. KENNEDY: Yes.

10 MR. ESTEY: Does your Trade Union have any
11 studies indicating what this would cost in the mining
12 industry or in the industry generally, or do you have any
13 studies which you have in mind when you make this submission?

14 MR. KENNEDY: No, we have no studies. Our
15 statistics are based primarily on the needs, or what would
16 be a reasonable need of people who are afflicted in this way.

17 MR. ESTEY: This present section is a
18 little bit unclear as to what "monthly average earnings"
19 means, whether it is twelve months from when the
20 employment started and whether it includes overtime and
21 so on: What is your view as to how far back an average
22 should go?

23 MR. KENNEDY: How far back an average
24 should go?

25 MR. ESTEY: Will you take the last week's
26 earnings and call that average, or the last two weeks, or
27 the last twelve months?

28 MR. KENNEDY: We have no submission on
29 changing the present method of the Board in their calcula-
30 tions.



1 MR. ESTEY: In some places the Act says
2 12 months and in other places it does not say, but you have
3 no submission on that point.

4 MR. KENNEDY: No.

5 MR. ESTEY: Monthly earnings, does that
6 include, in your submission, overtime?

7 MR. KENNEDY: Yes -- well, at the present
8 time the Act takes in all earnings, overtime and everything
9 to come up to \$6,000 so we are not proposing any change in
10 that.

11 MR. ESTEY: And the average should continue
12 to be done in the same way?

13 MR. KENNEDY: Yes.

14 MR. ESTEY: Do you want to carry on now
15 to Burial Expense?

16 MR. KENNEDY: I should also say, in this
17 respect, that in dealing with the matter of the cost of
18 compensation, I would like to make some reference to what
19 Mr. Justice Roach had to say. We had some considerable
20 comment this morning and at other times, as to the cost
21 of the Act and, at page 11 of Mr. Justice Roach's report,
22 he says:

23 "It is deceptive, however, to say
24 that the employers as a class,
25 bear the whole cost of compensation.
26 A considerable part of that cost is
27 passed on to the consuming public
28 by including it in the sale price
29 of commodities which the employers
30 produce or the services which they sell.



1 The employees benefit by having their
2 compensation certain and secure.

3 They may quarrel with the amount
4 but they are not left in **doubt** as
5 to what it shall be or whether
6 they shall receive it. Also, they
7 receive it whether or not the
8 accident was caused wholly or in
9 part by their own negligence."

10 I should say that I think it is admitted in
11 some briefs that the cost of compensation is passed on to
12 the consumer and I think there is another point which has
13 not been mentioned. It is submitted by a number of organ-
14 izations and employers in the main that the employer pays,
15 bears the whole cost of compensation. They have submitted
16 that the cost of compensation is passed on to the consumer
17 but we also find in our dealings with the employers that
18 the cost of compensation is also charged to the employee
19 when fringe benefits of a collective agreement are set out
20 as to the total cost to the company, of a package arrived
21 at in negotiations.

22 Then, I think there is another point where
23 the general public do assume quite a large share of the
24 costs of compensation because if you look at the statements
25 of companies, we see that charges for compensation are
26 deducted before taxes. Therefore, if there were no such
27 deductions, then I am not **in / possession** of the exact facts, but
28 I think it is close to 48 per cent of the money that goes
29 into compensation, would go in taxes to the general public
30 anyway. So, you see, when all things are taken into



1 consideration, then the actual cost to the employer is not
2 nearly so tremendous as it would appear to be on the surface,
3 that the worker, the public and the consumer bear consider-
4 able in the costs of compensation.

5 THE COMMISSIONER: I didn't fully understand
6 your reference to the loss of fringe benefits.

7 MR. KENNEDY: I said, and the cost of
8 fringe benefits, Mr. Commissioner.

9 THE COMMISSIONER: In other words, certain
10 fringe benefits that he would be entitled to under the
11 collective agreement are not paid because he is receiving
12 compensation, is that it?

13 MR. KENNEDY: Oh, no, what I meant is that
14 when the total package is calculated, compensation costs
15 are one of the items listed in the total cost to the
16 company of what the employee receives.

17 THE COMMISSIONER: I see.

18 MR. ESTEY: That argument, I suppose,
19 loses some of its steam if the employer is not in a
20 taxable bracket. Your figure, 48 per cent, is predicated
21 on two things, isn't it, one if the employer is running
22 at a profit and, secondly, if he is making over \$35,000 a
23 year before taxes?

24 MR. KENNEDY: That, of course, is correct.

25 MR. ESTEY: Then the 48 per cent jumps
26 to 77 per cent?

27 MR. KENNEDY: It could go up according
28 to the amount, that is true.

29 Burial Expense - Section 37

30 The present burial expense is set at



1 \$300.00. Based upon such information that we have elicited,
2 we recommend that this amount be increased to \$500.00.

3 I might say that we have made inquiries
4 with the profession, with funeral homes, and find that,
5 unless you get a very bare pine box, there is no funeral
6 which can be had for \$300.00 in this day and age and the
7 information we have is that they range from somewhere around
8 \$480.00 to something in excess of \$500.00 for the most
9 economical funeral that they can provide.

10 Payment of Lump Sum - Section 37

11 Presently, the Act provides for the payment
12 of a lump sum of \$300.00 to the widow and/or foster mother,
13 as the case may be. In order to insure family stability
14 and the security of the household in the immediate months
15 ahead, we recommend such lump sum be increased to \$1000.00.

16 MR. ESTEY: Excuse me a moment so we can
17 deal with those and perhaps get your thoughts on them. I
18 take it again, here, you have not had the opportunity to
19 analyse the Board's records to see what those two items
20 would cost?

21 MR. KENNEDY: No, I haven't.

22 MR. ESTEY: We can get them from the
23 Board anyway.

24 MR. KENNEDY: Computation of Disability
25 Payments - Section 40, 40 (A), 41, 42 and 44.

26 The present provisions provide for the
27 computation of temporary disability, temporary partial
28 disability, and permanent disability benefits on the
29 basis of 75 per cent of average weekly earnings, not to
30 exceed a limit of \$6,000 per annum. We are of the



1 opinion that such limitations work a financial hardship
2 with a resulting deterioration in living standards. We,
3 therefore, recommend computation of benefit payments be
4 based on 100 per cent/^{of}earnings loss, and that such basis
5 of computation apply to all present recipients of permanent
6 disability payments.

7 I would also like to refer to the report of
8 Mr. Justice Roach, at page 26, wherein he deals with the
9 original report on compensation of Chief Justice Meredith.
10 I am reading at page 26 on the third paragraph:

11 "The Ontario Act would appear to
12 come within the second of those
13 three schemes. Then, why was the
14 maximum amount by reference to which
15 compensation should be computed, fixed
16 originally at \$2,000 and increased
17 in 1943 to \$2,500 and, as of January
18 1, 1950, to \$3,000? Chief Justice
19 Meredith tells us in his report, why
20 he fixed the sum of \$2,000 as the
21 maximum. He said, 'I propose \$2,000
22 as the limit because that sum is
23 probably the maximum amount earned
24 in a year by the highest paid wage
25 earner'. In other words, 'workmen'
26 in the ordinary conception of that
27 term, were to be compensated by
28 reference to the yearly earnings
29 without any ceiling and all other
30 employees, regardless of their



1 earnings, were to be compensated
2 by reference to their yearly earnings
3 but with a ceiling on those earnings
4 of \$2,000. Actually, therefore,
5 the Ontario Act comes partly within
6 the second and partly within the
7 third scheme."

8 Going on to the second last paragraph on
9 the page, Mr. Justice Roach has this to say:

10 "On the evidence before me, the
11 sum of \$3,000 does not today,
12 represent the yearly earnings of
13 the highest paid workman. Some
14 workmen in the running trades and
15 the mines, make as high as \$4,000
16 a year.

17 I have concluded, therefore, that
18 the maximum amount should be increased
19 to \$4,000 and for that purpose,
20 recommend that sections 11, 43 (1)
21 and 98 (1) be amended by striking
22 out the figure '\$3,000' and sub-
23 stituting in their stead, the figure
24 '\$4,000'."

25 It can be seen from what I have just read,
26 that Mr. Justice Meredith, in his original findings on
27 conception of what the Act would be, suggested that it be
28 to take care of the highest wages in the industry at that
29 time.

30 Mr. Justice Roach, in the 1949 and 1950



1 Commission, accepts the same principal and recommends
2 \$4,000 because he says that that would seem to be the
3 maximum earnings in the industry at that time.

4 I submit, Mr. Commissioner, that at the
5 present time, there are a number of industries where work-
6 men have earnings considerably in excess of the \$6,000,
7 which is presently the limit. Therefore, where this is a
8 fact, this workman's contribution to the concept of the
9 Act, is much greater than it was deemed to be originally.
10 If he earnings are \$9,000 a year, then his payments would
11 be 75 per cent of \$3,000 less than it would be if it were
12 based on the highest wages in the industry.

13 Going on in our brief:

14 Light Duty

15 We have encountered a number of problems
16 relating to injured workmen who are assigned to light duty
17 employment by their employer.

18 MR. ESTEY: Could I ask you a point before
19 you get ahead of us. Do I hear you correctly that you are
20 saying on page 9 that, therefore, there should not be any
21 ceiling?

22 MR. KENNEDY: This is actually what our
23 position is, Mr. Estey, but certainly if there should be
24 a ceiling it should be much closer to reality and to what
25 workmen in the industry earn today.

26 MR. ESTEY: Would you care to put a figure
27 on that?

28 MR. KENNEDY: Well, I know that there are
29 people in the mining industry and it is not too unusual
30 that they could have earnings of \$8,000, \$9,000, even



1 \$10,000. I have no statistics with me on that, but I am
2 quite sure I could provide T-4 slips from people with whom
3 I am acquainted to show that this is true and I suppose
4 such statistics would be available from the Department of
5 National Revenue - whether you can get them out or not. It
6 is a fact that some earn considerably in excess of \$6,000.

7 MR. ESTEY: The general line of your brief
8 would indicate, however, that you are really saying that
9 for equity and to avoid a recurrent examination of what the
10 figure should be, that there is no good purpose served in
11 having an arbitrary ceiling and, therefore, you should
12 merely say X per cent - you say a hundred but X per cent of
13 the wages should be the basis. That is essentially what
14 you are saying?

15 MR. KENNEDY: That is essentially what I
16 am saying, yes.

17 THE COMMISSIONER: If Mr. Justice Roach
18 accepted the principle which you say he accepted, it is
19 hard to understand why a ceiling was put on at all.

20 MR. KENNEDY: Well, I think Mr. Justice
21 Roach does explain that where they had such a system in
22 Great Britain, I believe, where they had no ceiling, they
23 had litigation as to whether this was the amount that the
24 individual actually made. I think he makes reference to
25 that in the same section that I was reading, but it was to
26 avoid litigation that he did put on the ceiling.

27 Reading on in the brief, on page 9, on
28 Light Duty:

29 In some instances, undue pressure is
30 applied by employers or their supervisory representatives



1 to prevent workmen from reporting lost time accidents by
2 directing them to "light duty work". In many instances,
3 such light duty consists of sitting around in lunchrooms,
4 restrooms, or drys. At some future date, it is found that
5 the injury is of a disabling nature. Since the accident
6 quite often is not reported and adequate medical attention
7 has not been obtained, many such workmen experience diffi-
8 culties in establishing their entitlement under the pro-
9 visions of the Act.

10 Without commenting on the long range benefits,
11 if any, which accrue to an employer under the present ass-
12 essment and merit rating provisions of the Act, because of
13 this so-called light duty device, we submit that such
14 actions by employers and/or their representatives are in
15 violation of the basic principles upon which the Act was
16 founded. While the employer may maintain the workmen's
17 wages under these circumstances, we submit such undue
18 pressure is inconsistent under Section 17 of the Act.

19 We recommend, therefore, that the Act be
20 so amended as to provide that an injured workman be
21 assigned to light duty employment only when so directed by
22 a duly-qualified medical practitioner, and when such
23 practitioner clearly sets forth the efficiency range of the
24 injured workman.

25 Quite often, another vexatious problem is
26 encountered when a workman is directed to return to work
27 by his physician with a light duty designation and no light
28 work is available. Under these conditions, more than often,
29 the workman's benefit payments are reduced in accordance
30 with the Board's estimate of what he is physically capable



1 of earning. While we recognize the validity of light duty
2 employment in rehabilitating an injured workman, we consider
3 it a gross injustice that a workman should suffer monetary
4 loss because there is no light duty available. We recommend,
5 therefore, that in these circumstances, 100 per cent benefits
6 be restored, pending return of the injured workman to
7 suitable employment with his employer.

8 I believe that is all we have in the brief
9 covering the subjects.

10 MR. ESTEY: You raise a number of questions
11 in my mind at least, as to why should be done on this
12 question of light duty. Perhaps you can help us a little
13 bit on what the present practice is. I take it that if a
14 workman is injured in such a way that he is temporarily,
15 but only temporarily, partially, not wholly, incapacitated,
16 that if you follow the Act strictly, you report that, or
17 the employer reports it, the man reports it and he is
18 compensated on the basis of his average earnings at that
19 time depending on how long he is away.

20 MR. KENNEDY: 75 per cent.

21 MR. ESTEY: For the length of time that
22 he is so disabled?

23 MR. KENNEDY: Yes.

24 MR. ESTEY: What you are saying, therefore,
25 is that sometimes, instead of going through the Act and
26 getting that partial disability temporary payment, that
27 the employer says to the man, "Here, you stay at work and,
28 therefore, you don't need to report it. We will give you
29 something lighter to do." That is what happens, according
30 to what you said?



1 MR. KENNEDY: Yes.

2 MR. ESTEY: You are saying that this right
3 - and somebody here today, I think, the Motor Vehicle
4 Manufacturers, said that this should be a right of the
5 employer to provide the light work, rather than having to
6 pay it through the compensation procedures. You are saying
7 that is all right so long as it is reported and recorded
8 in the Board and approved by a doctor, is that your prop-
9 osition, Mr. Kennedy?

10 MR. KENNEDY: Yes. Well, our apprehension
11 on this question is, that it is true that it may work to
12 the advantage of the employer in assessment by cutting
13 down his lost time accident record. However, I think
14 what we are most concerned with is, that sometimes a man
15 who has a fractured limb, a leg, an arm, sometimes amputa-
16 tions or severe cuts, this man goes to work and it very
17 often could be responsible for the man aggravating the
18 injury or prolonging the amount of time he would be off
19 work, and may, in the end, cost the employer a greater
20 amount than it would if the man were to stay home and get
21 proper medical attention and carry out the instructions
22 of his physician.

23 MR. ESTEY: Can we set aside medical
24 attention for the moment; I want to come back to that.
25 I take it in some circumstances that we heard about this
26 morning from Mr. Douglas, in the automotive field, the
27 man might be better off financially, to take the light
28 duty from the employer and carry on with his work and
29 his full pay, than to go through the procedure of the Act
30 because he gets a fraction of 75 per cent, depending on the



1 extent of the disability, does he not?

2 MR. KENNEDY: Yes.

3 MR. ESTEY: I cannot understand, therefore,
4 part of what you are proposing. I can understand that you
5 have to have a report so that it is available if this
6 thing becomes more serious, or if he has a subsequent
7 accident and he has to show he incurred the first condition
8 while employed; but are you saying that the employer should
9 not have the right to make available to the employee, this
10 light duty and report it, or are you saying that once it
11 is reported, you have no objection to the light duty,
12 provided it is medically approved?

13 MR. KENNEDY: If it is medically approved
14 then, of course, this may, in some instances, assist in
15 the rehabilitation. Something that is of greater concern
16 to us is that with some employers it is fairly easy to
17 arrange for light duty work, and this assists the workman
18 because it is part of the therapy recommended by a doctor.
19 However, a greater problem as we see it is where the
20 doctor will recommend that the man is now capable of
21 performing some function of light duty and the employee
22 then contacts the company and is told that there is no
23 light duty for him, that they do not want to see him until
24 the doctor gives him a slip for full duty. But, because
25 of the doctor having made a report that the man is capable
26 of some work, then the Board has no alternative but to
27 reduce the pension, accordingly.

28 MR. ESTEY: So, in that case the man
29 loses everything.

30 MR. KENNEDY: That is right, and we are



1 not blaming this on the Board. They administer the Act as
2 it is set out, but we respectfully submit that this should
3 be taken care of in the Act.

4 MR. ESTEY: That is, you want section 41
5 amended so that where the man is said to be physically
6 capable of earning something that that only be taken into
7 account where that alternative is, in fact, available to
8 him.

9 MR. KENNEDY: That is right.

10 MR. ESTEY: And if he declines the work,
11 then he is given a fraction of 75 per cent.

12 MR. KENNEDY: Yes.

13 MR. ESTEY: Which the Act now provides for,
14 but if he does not decline the work, because there is no
15 work there, he would get the same disability payment as
16 though it were a total disability case.

17 MR. KENNEDY: That would be our submission,
18 because he is not able to go back to full duty because of
19 the accident he suffered.

20 MR. ESTEY: And there is no light duty
21 available?

22 MR. KENNEDY: That is right.

23 THE COMMISSIONER: Are you restricting
24 that to light duty available with his own company? What
25 about unemployment insurance?

26 MR. KENNEDY: Well, he is not, under the
27 circumstances, entitled to unemployment insurance.

28 THE COMMISSIONER: I saw that stated in
29 somebody's brief. There is a letter in this morning from
30 the Assistant Deputy Minister of the Department of



1 Citizenship and Immigration, in answer to an inquiry in
2 this particular matter:

3 "... whether a workman who has a
4 temporary partial disability would
5 receive assistance from the National
6 Employment Service in placing him in
7 employment.

8 The National Employment Service
9 would not refuse assistance to an
10 individual in the circumstances
11 described in your letter. In
12 fact, this person would fall in
13 the category of those applicants
14 who require particular and
15 specialized attention. He would
16 be interviewed and counselled by
17 the Special Services Branch and
18 be referred to suitable employment
19 that he was physically capable of
20 doing."

21 This is not in accordance with your under-
22 standing?

23 MR. KENNEDY: Well, unless there is a new
24 provision, Mr. Commissioner, my understanding of the Unem-
25 ployment Insurance Act is that if a man is disabled or
26 sick when he makes application, then he is not entitled
27 until he has a certificate of good health. If, however,
28 and this is a change that was made a few years ago, if a
29 man is in receipt of unemployment insurance benefits, and
30 then becomes sick, then they will carry him during that



1 sickness, but not if there is disability or sickness prior
2 to his application.

3 THE COMMISSIONER: I am mistaken as to
4 this letter. Perhaps we had better put it in as Exhibit
5 11 anyway.

6 EXHIBIT NO. 11:

7 Letter from Department of
8 Citizenship and Immigration,
dated September 22nd, 1966

9 MR. ESTEY: Turning now to medical aid,
10 since the Act provides that the workman is entitled to
11 medical aid upon injury without reference to anything
12 else, I would like you to clarify why you think it is
13 necessary -- and in your brief, apparently you do -- that
14 this light duty problem should now relate to the man's
15 entitlement to medical aid? He gets it whether he stays
16 on the job, goes off the job, gets partial disability,
17 total disability or anything else, doesn't he?

18 MR. KENNEDY: Certainly, if you read this
19 into the brief, Mr. Estey ---

20 MR. ESTEY: No, you said a moment ago
21 about medical aid that you had some difficulty in connec-
22 tion with the practice of the employer saying to the man,
23 "You keep on this light job and don't bother reporting
24 the accident". Now, I took it from what you said that
25 that affected his entitlement -- what you perhaps have in
26 mind is practical entitlement.

27 MR. KENNEDY: No, if I gave that impression,
28 I am sorry, Mr. Estey; I did not have any incidents or
29 reference to medical aid as such. We understand it well
30 and have no complaint about medical aid.



1 MR. ESTEY: At the bottom of page 9, at
2 the end of the first paragraph dealing with light duty,
3 you say: "Since the accident often is not reported and
4 adequate medical attention has not been obtained, many
5 such workmen experience difficulties in establishing
6 their entitlements under the provision of the Act." Now,
7 that is the part I have reference to.

8 MR. KENNEDY: This is the part where the
9 workman is persuaded not to report an accident but to
10 continue to go to work and will receive wages when there
11 is no report of the accident whatsoever.

12 THE COMMISSIONER: You have a reference
13 in that situation to where a subsequent claim is made at
14 a later period and it refers back to this as the source
15 of the trouble.

16 MR. KENNEDY: Yes.

17 THE COMMISSIONER: Is that correct -- is
18 that what you have in mind?

19 MR. KENNEDY: Yes. I could quote some
20 cases which I have been involved in, Mr. Commissioner,
21 and some of them are really heart-breaking. It is not
22 a wide practice, and there are many employers who would
23 not tolerate that, but we have experience of some and
24 these are the most heart-breaking cases where no accident
25 is reported and, subsequently, something goes wrong. I
26 found a man who crawled on his belly, two miles over
27 ice, in below zero weather, to come and see me, who was
28 injured on the ground and the employer had him report it
29 to the insurance company, rather than compensation. I
30 don't want to make this an issue, but these are the



1 heart-breaking matters.

2 MR. ESTEY: I want to find out what this
3 means. You say, since it was not reported and adequate
4 medical attention had not been obtained -- now do those
5 two follow? Do those two statements link together? You
6 could get the medical attention without the reporting of
7 the claim, could you not?

8 MR. KENNEDY: Yes, "get medical attention",
9 but if a man does go to the doctor and he is then persuaded
10 to go and do some form of light duty around the place,
11 sometimes he may do that against his doctor's advice.

12 MR. ESTEY: Just a moment, I am not making
13 myself clear. You are talking here about failure to report
14 where the employer presumably does not want to report it
15 because it will run up his accident record and drain the
16 part of the fund he has to contribute to, so it is against
17 his financial interest to report it and he tells the man,
18 "Don't bother reporting it. I will give you some work to
19 do and you won't suffer any loss of wages".

20 MR. KENNEDY: Yes.

21 MR. ESTEY: Now, what I am trying to find
22 out from you is, are you saying in those circumstances
23 it also follows that the man loses, in a practical sense,
24 the medical attention he should be getting?

25 MR. KENNEDY: Well, he may lose the
26 medical attention he should be getting, and if this is
27 the case, then the injury can develop into something
28 much worse.

29 MR. ESTEY: I just don't understand how
30 those two fit. Perhaps I am wrong, but I don't understand



1 that. The man can still go to his doctor as soon as he
2 is hurt and he can get treated, whether or not the accident
3 is reported as a compensable accident?

4 MR. KENNEDY: That is right.

5 MR. ESTEY: So, this practice of giving
6 him light duty, I find it difficult to understand why
7 that necessarily results in any loss of medical attention.

8 MR. KENNEDY: It does not, necessarily,
9 result in loss of medical attention. The individual is
10 not denied medical attention, but if he accepts the
11 suggestion that he keep working, then he will neglect to
12 get medical attention.

13 MR. ESTEY: I see. What you are saying
14 is that perhaps he should be hospitalized or stay at home,
15 or do something else.

16 MR. KENNEDY: Well, under the doctor's
17 care.

18 MR. ESTEY: And he is not getting the
19 complete medical treatment that would ordinarily follow
20 if he had gone to his employer and he had said to him,
21 "Go home"?

22 MR. KENNEDY: That is right. I am not
23 putting all the blame on the employer because there is
24 some responsibility on the individual who accepts this.

25 MR. ESTEY: I was going to take you to
26 that: He also is probably tempted to accept it because
27 he will receive his full pay whereas if he goes on the
28 compensation and is partially disabled, he would be paid
29 partial compensation?

30 MR. KENNEDY: That is correct.



1 MR. ESTEY: So, your submission is, in
2 that connection, what kind of a change should be made to
3 the Act?

4 MR. KENNEDY: Well, I don't know what
5 change should be made to the Act, Mr. Estey, but perhaps
6 it is something that could be stressed in educational
7 material.

8 MR. ESTEY: Yes, that is, in effect, what
9 you say in your brief on page ten, thank you.

10 THE COMMISSIONER: Well, if your solution
11 is that when that happens there should be some direction
12 by a duly qualified medical practitioner, and in that
13 event the whole of his medical facts will be on record
14 following the accident.

15 MR. KENNEDY: That is correct, sir.

16 MR. ESTEY: Next, Mr. Commissioner, on
17 the topic, Benefit Payments. There is a reference to
18 this on the Ontario Federation of Construction Associa-
19 tion and that Association has spoken to me on Friday,
20 saying that they have members scattered all over the
21 province and they wanted to convene them to make this
22 single presentation on this one range of topics, not on
23 the whole brief, and they are coming in later.

24 Then, The Ontario Federation of Labour
25 has substantial representations on the topic of Benefit
26 Payments. Does anyone here represent the Ontario Federa-
27 tion of Labour?

28 MR. CRAIGS:

29 MR. ESTEY: What part of your brief are
30 you going to start at, Mr. Craigs?



1 MR. CRAIGS: Page 17, Mr. Estey, Section 37.

2 Mr. Commissioner, our sentiments in this regard
3 are that the present legislation does not follow the lines
4 set out by Mr. Justice Meredith some fifty years ago. We
5 think that he clearly established the principle that there
6 should be a relationship to death benefits to the earnings
7 of the deceased. We contend that a widow, entitled to benefit
8 under the Workmen's Compensation Act should receive at least
9 75 per cent of her late husband's earnings, or, a minimum
10 of \$100. We are thinking of that as \$100 per week, whichever
11 is the larger amount, as long as she remains a widow. This
12 would enable her to maintain herself at a level close to
13 which she had been accustomed by virtue of her late husband's
14 earnings as a pension. If the widow is not allowed the 75
15 per cent of earnings as a pension, then the dependent chil-
16 dren should be provided with a monthly allowance sufficient
17 to feed and clothe them, as well as providing the cost of
18 their education. And in terms of education, we are thinking,
19 of course, always of the possible opportunity or desirability
20 of going on to university. We are also of the opinion that
21 the limit of \$150. established in Section 37 (3) (b) and (c)
22 should be removed, because we feel that this is discriminatory
23 and inflicts an added burden on larger families.

24 Other benefits under Section 37 of the Act
25 should also be raised in accordance with present-day
26 needs. We propose that Section 37 (1) (a) should
27 be amended to provide \$700. for funeral expenses instead
28 of the present \$300. because it is impossible for a widow
29
30



1 to obtain a funeral for \$300. or less today. In addition
2 to the burial expenses up to \$700 mentioned above, we
3 are also of the opinion that the lump sum, paid at the
4 death, as distinct from funeral expenses, of the workman,
5 should be increased to \$500. so that the total amount a
6 widow would receive at the time of her husband's death,
7 would be \$1,200., instead of the present \$600.00.

8 We, therefore, propose that death benefits
9 should be paid to such survivors of the fatally-injured
10 workman, who were totally dependent on him in the past,
11 and, whom, under the country's income tax laws, he had
12 been able to claim as dependents.

13 MR. ESTEY: Could we ask you a couple of
14 questions on that point before you get on to something
15 else not so directly related?

16 Mr. Craigs, on this proposal you make on
17 the lump sum payment and the funeral expenses, would
18 those payments be payable, in your view, not only when
19 the death results under circumstances entitling compensa-
20 tion under section 37, but also where the death occurs
21 while the man is totally disabled and is receiving full
22 compensation?

23 MR. CRAIGS: I am not quite sure what the
24 present policy of the Board is in this respect or how
25 the legislation spells it out.

26 MR. ESTEY: The legislation is a little
27 unclear.

28 MR. CRAIGS: Yes, I find it unclear too,
29 Mr. Estey.

30 MR. ESTEY: That is section 37, (5).



1 That is why I was asking whether you had considered that
2 this kind of payment should be keyed only to death
3 resulting immediately from the injury or where these
4 two benefits should tag on as a part of the entitlement
5 to full compensation.

6 MR. CRAIGS: I would think, as far as the
7 Federation is concerned, that they would accept some
8 sort of modification in the latter instance. Certainly,
9 I am sure you will agree, Mr. Estey, that immediate
10 subsistence, substantial assistance in the first case
11 of someone fatally injured is imperative.

12 MR. ESTEY: Well, whether I agree or not
13 doesn't really make any difference, it is a question of
14 whether the Commissioner might agree. One other question
15 on that point, Mr. Craigs: You made four monetary
16 proposals here and I am wondering if the Ontario Federa-
17 tion of Labour has any statistics as to the frequency
18 with which these claims are paid and therefore, what the
19 cost would be if these proposals were adopted in whole
20 or in part.

21 MR. CRAIGS: No, Mr. Estey, we have no
22 actuarial studies available at all.

23 MR. ESTEY: I take it that out of \$110
24 million dollar payments, that not a very significant
25 part is represented by the burial expenses.

26 MR. CRAIGS: I would not think so. We
27 are simply heartened by the fact that the government saw
28 fit to increase the retroactivity of disability pensions
29 and, therefore, we would assume that the fund is well
30 able to accept this sort of contingency.



1 MR. ESTEY: You made a recommendation
2 about removing the ceiling of \$150 monthly payable to a
3 widow with children pointing out that this militates
4 against larger families and also, I take it, you are say-
5 ing that that makes it impossible to give the children
6 the opportunity of higher education and, therefore, I
7 take it, you are making the proposal in the light of the
8 fact that the Act already says that the Board may, in
9 its discretion, extend the period of compensation to
10 permit university education. That is 37 (2). So you
11 are saying that when you get to 37 (3), the same recogni-
12 tion should be accorded the fact that the compensation
13 has to be brought up to allow advanced education?

14 MR. CRAIGS: Yes.

15 MR. ESTEY: That probably would be a
16 more expensive proposal to implement than the others
17 you have suggested and therefore, I ask if you happen
18 to know of any statistics.

19 MR. CRAIGS: No, there are no statistics
20 available to my knowledge at all, Mr. Estey.

21 MR. ESTEY: Thank you, Mr. Craigs. That
22 takes you to Section 41.

23 MR. CRAIGS: Mr. Commissioner, may I
24 quote Section 41 of the Act which states:

25 "Where temporary partial disability
26 results from the injury, the compensation
27 shall be a weekly payment of 75%
28 of the difference between the average
29 weekly earnings of the workman before
30 the accident and the average amount that



1 he is earning or is physically capable
2 of earning, as determined by the Board.."
3 (Underlined is ours.)

4 The emphasis is on those last words. It
5 seems to us that the crux of the problem is that the
6 workman may be physically capable of earning a certain
7 amount of money, if employment were available to him,
8 but he is not able to return to his former job.

9 It should be considered that the workman
10 at the time of the injury was on the payroll of the
11 employer, otherwise he would not have been entitled to
12 benefits in the first place. The injury has taken him
13 completely out of the labour market and if his employer
14 has no modified or light work available for him, he
15 will remain outside the labour force. If he attempts
16 to register for benefits under the Unemployment Insurance
17 Act, he will find that the National Employment Service
18 will not place him in employment because:

- 19 (a) he is actually employed; and
20 (b) he is not physically capable to do any work they
21 would recommend.

22 It is our contention, therefore, that an
23 injured workman should remain on full temporary total
24 disability payment until he is capable of returning to
25 his former employment, or, until he is sufficiently
26 recovered to return to the labour force. If no employ-
27 ment is available at his former place of employment,
28 after he has fully recovered, he then could use the
29 facilities of the National Employment Service.

30 We urge your Commission to seriously



1 consider this section of the Act, since it has brought
2 considerable hardship to many injured workers, who were
3 forced to exist on reduced compensation payments, in many
4 cases, on only 25 per cent of the original benefits they
5 were receiving immediately following the injury.

6 MR. ESTEY: Do you mean by that that he
7 would not have to take the light duty if it were available?
8 Right in the middle of page 21 you say, "it is our con-
9 tention". Does that submission mean that if the man is
10 under temporary disability and there is light work avail-
11 able and the doctor says that he is capable of performing
12 it, what is your submission on those facts?

13 MR. CRAIGS: Oh, we urge, if light duty
14 is available at the place normally he is employed in,
15 we would urge that he accept the employment.

16 MR. ESTEY: So that the whole of this
17 submission is predicated on that one situation which may
18 be very important if you are that one man, but it is
19 limited to the circumstance where he is partially dis-
20 abled but capable of performing light work and none is
21 available, that is the whole problem.

22 MR. CRAIGS: That is right.

23 MR. ESTEY: Can you tell us about that
24 figure you have 50 per cent or 25 per cent and how,
25 generally, that is arrived at, at the top of page 20.

26 MR. CRAIGS: The 50 per cent is relatively
27 common, Mr. Estey, and descending to 25 per cent is
28 certainly less common. But it is not at all unusual,
29 particularly in places where there are heavy and arduous
30 forms of work done that a man can be reduced to 50 per



1 cent and, in essence is almost incapable of doing anything
2 by the standards of the work.

3 MR. ESTEY: I see.

4 MR. CRAIGS: There is one other situation
5 that has occurred, sir, and that is where a man's individual
6 physician has certified him as fit to go back to work and
7 accept modified duties, but the plant doctor, that is the
8 doctor employed by the employer, has disagreed and rejected
9 the man and expressed a medical judgement that the man is
10 not fit to perform any work.

11 MR. ESTEY: What does the Board do then,
12 hire another doctor?

13 MR. CRAIGS: It is not a funny matter,
14 sir. The man is caught squarely in between two profes-
15 sional opinions. He wants to go back to work; one doctor
16 says he can and the other doctor says he can't.

17 MR. ESTEY: I don't know, but doesn't
18 the Board then just get another opinion?

19 MR. CRAIGS: Not necessarily so, sir.

20 THE COMMISSIONER: Can't the Board require
21 that he go back?

22 MR. ESTEY: But they could, on another
23 opinion, find that the man was not capable of performing
24 a light duty which would have a bearing on whether he
25 fits under section 41, or not.

26 MR. CRAIGS: Well, my understanding of
27 what the Board has commonly done, is merely accepted the
28 fact that the man has a report from his physician that
29 he is capable of light duty and has simply reduced his
30 disability payments accordingly.



1 MR. ESTEY: And this disregards the fact
2 that the employer's doctor at the plant says he isn't.

3 MR. CRAIGS: I would say so, yes. The
4 Board is reluctant to get itself involved in a dispute
5 between two doctors.

6 MR. ESTEY: Wouldn't the workman simply
7 appeal that?

8 MR. CRAIGS: There is no mechanism, to my
9 knowledge, by which he can do it.

10 MR. ESTEY: Couldn't he appeal that kind
11 of decision? Couldn't he appeal to the Board saying,
12 the Review Board, saying, "I am a total disability case,
13 I have a doctor's statement to prove it". It would have
14 been a very good ground, I would have thought, but you
15 don't know if he has appealed or not, on that case?

16 MR. CRAIGS: Not to my knowledge.

17 MR. ESTEY: Perhaps we can ask the Board
18 that when they come up and see what they do.

19 MR. CRAIGS: Yes.

20 Those are all the points we have at this
21 time.

22 MR. ESTEY: I thought you went ahead there
23 to section 43.

24 MR. CRAIGS: Under the circumstances, I
25 think I would rather start after lunch.

26 MR. ESTEY: All right, thank you.

27 --- At 1:00 p.m. the Hearing adjourned until 2:00 p.m.
28



1 --- At 2:00 p.m., the Hearing re-commenced.

2 MR. ESTEY: I think you reached the
3 bottom of page 21, did you not, Mr. Craigs?

4 MR. CRAIGS: I had, Mr. Estey.

5 MR. ESTEY: Yes, sir, do you want to carry
6 on?

7 MR. CRAIGS: Mr. Commissioner, when I
8 invited Mr. Estey's opinion just before recess, I trust
9 you don't accuse me of lese majeste.

10 THE COMMISSIONER: That is quite all
11 right, I am not a bit touchy, Mr. Craig, thank you very
12 much, sir.

13 MR. CRAIGS: Mr. Commissioner, I would
14 like very much to explain our views on Section 42 of the
15 Act, which is at the top of page 22.

16 THE COMMISSIONER: Well, you can carry
17 on, Mr. Craigs.

18 MR. CRAIGS: Thank you, Mr. Commissioner.

19 Mr. Commissioner, over the years we have
20 had considerable difficulty trying to get disability
21 pensions updated so that they are somewhat in line with
22 present-day costs. The government amended the legislation
23 in 1965 which was a very great improvement. Under the
24 existing Act, pensions for permanent disabilities for
25 accidents that happened prior to January 1st, 1950 are
26 now paid at 75 per cent of the earnings at the time of
27 the accident. Costs have, of course, increased notice-
28 ably since 1950 and these pensions are still too little.

29 This will be further aggravated as costs
30 and wages continue to rise. We would, therefore, suggest



1 that consideration be given to further adjustments in
2 these pensions and also that some method be devised to
3 have these pensions updated as the cost-of-living rises,
4 perhaps something in line with the Consumer Price Index.

5 THE COMMISSIONER: You are acquainted,
6 no doubt with what has been said in various reports on
7 these matters. The argument in many cases is that this
8 should be a matter for a consolidated fund, rather than
9 it should be borne by current industry.

10 MR. CRAIGS: From consolidated revenue.

11 THE COMMISSIONER: I don't suppose it
12 calls for any comments from you. You don't care, as long
13 as they get it.

14 MR. CRAIGS: No, sir, we are very open-
15 minded on that point. We would leave it to the ingenuity
16 of those concerned.

17 MR. ESTEY: I suppose also, you would
18 like to hitch this to the D.B.S. Consumers Price Index
19 and at inflationary times it might cause some difficulty,
20 if we get a inflationary cycle.

21 MR. CRAIGS: We suggested merely that
22 one avenue be explored. I am sure there are others. I
23 am not particularly enamoured with tying anything to the
24 Consumer Price Index. Escalator clauses have had a mixed
25 reception.

26 THE COMMISSIONER: It is something that
27 I know little about at the moment. I don't know what
28 the effect of what was done in British Columbia has
29 been, or what is proposed. You simply say that some
30 matter be devised and these pensions up-dated with the



1 cost of living.

2 MR. CRAIGS: It may well be that perhaps
3 even a statutory review, say, once every year or once
4 every eighteen months, rather than the present undetermined
5 period when they come under scrutiny.

6 With your permission, Mr. Commissioner, we
7 would like to offer our observations on Section 43 of
8 the Act.

9 Section 43 sets out the minimum compensa-
10 tion to be paid. It states that where the average earn-
11 ings are not less than \$30 a week, compensation will be
12 paid at the basis of \$30., or the actual earnings. We
13 like to point out that this is even below the legal
14 minimum wage of \$1.00 per hour, or \$40. weekly, for a
15 forty-hour week, presently in force, as a statute of
16 the Province. We, therefore, believe that the minimum
17 compensation should be raised to conform to the existing
18 minimum wage legislation presently in force, and if that
19 wage is increased in the future, compensation be placed
20 on a pro rata basis.

21 MR. ESTEY: Have you any report on how
22 that is/^{done}in the daily operation of the fund, whether the
23 payments are, in fact, kept up by the operations of
24 section 43, in your experience?

25 MR. CRAIGS: I have no knowledge of that
26 at all, none whatsoever.

27 MR. ESTEY: I was thinking that seems
28 like a good suggestion and it seems likely it would not
29 cost very much.

30 MR. CRAIGS: I would not think so. Not



1 only that, but we view it as an anomaly, that there should
2 be a statute.

3 Section 44:

4 It is our contention that the present day
5 ceiling of earnings set out in the Workmen's Compensation
6 Act of \$6,000 yearly, on which compensation is being paid,
7 is no longer realistic. Many, many workmen in industry
8 today are now earning more than this amount and their
9 compensation payments, therefore, do not amount to 75 per
10 cent of their earnings but, in many cases, rather between
11 40 per cent and 55 per cent. We, therefore, believe that
12 the ceiling on earnings should be removed and compensation
13 paid on the actual earnings of the workman. We also
14 believe that the workman should receive compensation
15 equalling his take-home pay, while he is working.

16 MR. ESTEY: That last sentence would
17 indicate that he should get a payment equal to his net
18 pay after the subtractions under the Federal Statutes and
19 under the applicable Provincial Statutes.

20 MR. CRAIGS: Would you repeat that, please?

21 MR. ESTEY: The last sentence means that
22 it would be taken off his take-home pay. By that, I take
23 it you mean his pay after all the deductions under applicable
24 Provincial, as well as Federal Statutes.

25 MR. CRAIGS: That is right.

26 MR. ESTEY: And pension contributions
27 under the Canada Pension Act?

28 MR. CRAIGS: Yes. In other words, the
29 level of compensation should exactly equal what he has
30 when he marches in the house on Friday.



1 MR. ESTEY: Except that you would not
2 subtract, getting down to nuts and bolts, you would not
3 subtract compulsory payment of dues at source under the
4 collective agreements, whether or not you are on the Rand
5 formula or on the collective agreement specifying deductions
6 -- you would not take that off? You are talking about
7 statutory deductions?

8 MR. CRAIGS: That is right, statutory
9 deductions.

10 THE COMMISSIONER: The further complaint
11 here, that under some circumstances, that the workman
12 makes more by staying at home than being at work. If there
13 is no incentive for him to return, then it might be an
14 argument against this matter that he raised.

15 MR. CRAIGS: Well, first of all, Mr.
16 Commissioner, in the first instance the man is in the
17 hands of his own physician. If his physician so certifies
18 him as being fit to return to work, I think the man must
19 do so.

20 THE COMMISSIONER: How about income tax:
21 Does it come into this question?

22 MR. CRAIGS: No, sir, because all federal
23 deductions would be taken off and tax is one of them.

24 THE COMMISSIONER: Yes, it is deducted at
25 source. Is that the extent of your submissions on these
26 points?

27 MR. CRAIGS: Yes, sir.

28 MR. ESTEY: We missed one this morning,
29 at the request of the organization concerned, and I refer
30 to the Labourers' Union. I believe the gentlemen are here



1 now, if they are ready to proceed.

2 MR. KOSKIE: I'd like to say, Mr. Commis-
3 sioner, that I thank both counsel and yourself for your
4 indulgence in these matters.

5 Mr. Commissioner, dealing with the topic
6 Benefit Payments and Rates of Compensation, I would first
7 like to comment on the first heading, Compensation and
8 Salary Ceilings, and this can be found at page 10 of the
9 brief, paragraph 2, headed, "Computation of Payments".

10 Under the Act, temporary or permanent
11 disability is generally compensated by a weekly payment
12 of 75 per cent of the workman's average weekly earnings,
13 not to exceed the rate of \$6,000.00 per annum, so long
14 as the disability lasts. Again, these provisions con-
15 stitute a diversion from the true principle of compensa-
16 tion whereby a workman should receive 100 per cent of
17 his average weekly earnings with no maximum, when injured
18 through no fault of his own in the course of his employment.

19 May I interject here, Mr. Commissioner, and
20 say that we emphasize this point for the additional reason
21 that once a person is entitled to benefits under the
22 Workmen's Compensation Act, he is, of course, precluded
23 from bringing any court action. Now, if the workman was
24 able to commence court action, and recover, and if he was
25 found not to be liable himself, then he, of course, could
26 no doubt be compensated 100 per cent. Under the Workmen's
27 Compensation Act, he is only entitled to a fraction of
28 what he would perhaps be entitled to if he were able to
29 proceed to court. Now, the Labourers' Union is of the
30 opinion that if he is, in effect, to forego his right of



1 action in the courts, then in so doing, he should be
2 entitled to compensation on the same basis that he would
3 be entitled to if he were able to proceed to court.

4 THE COMMISSIONER: Of course, if he were
5 found to be negligent, then he would not get any compensa-
6 tion, to carry your argument to the logical conclusion.
7 So, as a consequence, a number of workmen get the benefit
8 of that. They forego the right to sue but they get the
9 compensation as long as it is not wilful negligence.

10 MR. KOSKIE: We do appreciate that, but
11 one must still take into consideration those persons who
12 are not at all negligent and, where accidents are, in fact,
13 caused by the negligence of the employer or another employee.

14 THE COMMISSIONER: I suppose what the Act
15 does is just as it does between these people in one
16 particular class: One part sweetens up the level for the
17 other part that would be down, just as an employer with
18 no accidents in his class, has to pay the same as an
19 employer with a number of accidents, or, with unemployment
20 insurance, some organizations like banks, which don't have
21 a heavy turnover, have to contribute just the same as
22 those who do have a heavy turnover. In this respect, I
23 suppose the workman who foregoes his right to sue and who
24 was not negligent, suffers a loss and the one who was
25 negligent reaps a gain. There are other things, as well,
26 of course, such as medical treatment and things like
27 that, all of which have been mentioned by previous
28 submissions.

29 MR. KOSKIE: As far as the contributions
30 by the employers are concerned, I intend to deal with that



1 later on, that the Labourers' Union proposes that some sort
2 of an incentive payment plan be invoked as opposed to the
3 present plan of employer contributions. In other words,
4 it is suggested by the Labourers' Union that the
5 employer, who is safety conscious, should in some way
6 benefit from any expenditures he may make in order to make
7 the working conditions much safer. I think, taking that
8 in line with the suggestion here, that the workman be
9 entitled to 100 per cent compensation if he is injured
10 through no fault of his own, I think the two perhaps could
11 be compromised there.

12 I do point out, Mr. Commissioner, when we
13 say here for 100 per cent of his average weekly earnings,
14 we are, in our brief, referring to a person who is injured
15 through no fault of his own.

16 THE COMMISSIONER: Are you going to make
17 an exception there?

18 MR. KOSKIE: We are speaking of that
19 particular person and there is no reason why he should
20 not. I appreciate one must reach a happy medium somewhere
21 On the other hand, we appreciate a workman, who was in no
22 way responsible for his injuries, should not suffer because
23 others, who are perhaps to some extent responsible, obtain
24 an equal compensation basis.

25 THE COMMISSIONER: You would not just like
26 to wash out the Act altogether? This might achieve the
27 same result.

28 MR. KOSKIE: Well, we would not want to
29 do that, of course, but we do want a fair basis of com-
30 putation of payments for the person who is injured through



1 no fault of his own. If there has to be a general increase
2 for everybody, then perhaps that is the answer.

3 If I may continue, on page 10:

4 Therefore, we would recommend that Sections
5 40, 40a, 41, 42 and 44 be amended to conform with the
6 compensation principle, and that an injured workman compen-
7 sable under the terms of the Act receive such compensation
8 as would equal his take-home pay had he not been injured.

9 Also, we would submit that the minimum
10 amounts of compensation set out in Section 43 of the Act
11 are totally unrealistic in light of today's rapidly rising
12 price index. Rather than fixing these minimum amounts for
13 temporary or permanent disability as set dollar figures,
14 which can easily become outdated in a short period of
15 time, we would suggest that the minimum amount be pegged
16 so as to automatically conform with the existing legal
17 minimum wage rate for each class of workman in the Province.
18 In other words, an increase in the legal minimum wage rate
19 should result in a corresponding and identical increase
20 in the minimum compensation amount under Section 43. In
21 cases of partial disability, of course, there would be a
22 minimum consisting of a portion of the minimum wage rate
23 in proportion to the impairment of earning capacity.

24 THE COMMISSIONER: Are you referring to the
25 overall minimum wage rate for all labourers in the province?

26 MR. KOSKIE: Under the Industrial Standards
27 Act, I believe it is, there is a wage rate set for various
28 occupations.

29 THE COMMISSIONER: What you are suggesting
30 is not a minimum overall wage but a minimum wage for each class



1 MR. KOSKIE: Yes. I think in that Act there
2 is a provision covering labourers. The situation, as I
3 understand it, Mr. Commissioner, is that for many other
4 trades there are provisions under the Industrial Standards
5 Act covering minimum wages for each particular class.
6 Now, not all of them, as yet, have a provision in that Act
7 protecting them in this regard. In other words, they have
8 to resort to the general, legal minimum wage for the
9 Province of Ontario, covering everybody. But, we are
10 rapidly now getting to the situation where each class,
11 under the Industrial Standards Act, is now guaranteed a
12 certain minimum wage which, of course, would not be the
13 same in each class.

14 THE COMMISSIONER: If there was any contri-
15 bution towards the compensation fund, there would certainly
16 be a very strong argument because they would be contribut-
17 ing according to their earnings.

18 MR. KOSKIE: Yes, sir.

19 THE COMMISSIONER: This is the first time
20 I have seen this advanced in this particular form, as to
21 type and classes.

22 MR. KOSKIE: Now, Mr. Commissioner, we
23 have Mr. Gallagher with us today to discuss one particu-
24 lar situation involving the payment of compensation and,
25 in particular, Section 40. Mr. Gallagher would like to
26 comment on that.

27 MR. ESTEY: This is on your same topic,
28 Mr. Koskie, on page 10?

29 MR. KOSKIE: Yes, it is. Mr. Commission-
30 er, we are referring to the case here, of Mr. Chris.



1 Healy, Claim number 6045490. That is the claim number
2 in the Workmen's Compensation Board. Mr. Gallagher will
3 give some evidence in regard to that.

4 MR. GALLAGHER: Mr. Commissioner, I think
5 to give you this example, I will read the letter which
6 was written and sent to Mr. Jack Cauley, Vice-Chairman
7 of the Compensation Board, at his request. We had been
8 trying to discuss this case, which we felt was rather
9 shocking, and he suggested that we write a letter and
10 set it down to him, personally, and it is this letter
11 which I wish to read.

12 MR. ESTEY: What is the date of that
13 letter?

14 MR. KOSKIE: April the 1st, 1964, addressed
15 to the Workmen's Compensation Board, and was written by
16 the Labourers' Union, Local 183. We will file a copy
17 of that with the Commission.

18 EXHIBIT NO. 12: Letter dated April 1st, 1964,
19 to Mr. Cauley, Workmen's
20 Compensation Board, re. Chris.
Healy, Claim 6045490

21 MR. GALLAGHER: The Labourers' Union, Mr.
22 Commissioner, would like to go on record before saying
23 these things, it may seem we are attacking the Compensa-
24 tion Board, but we are not. There is no department we
25 have ever dealt with that has been more courteous or
26 helpful with us. We are bringing forth these items because
27 we hope that the Compensation Act will be improved as a
28 result of them but, by no means are we attacking the
29 officials or the Act itself.

30 This letter reads:



Nethercut & Young

Toronto, Ontario

752

"Attention: Mr. J. C. Coley - vice

Chairman. I am writing you concerning

a very unfortunate and deserving case.

It concerns Mr. Chris Healy, Claim #

6045490. He was employed as a mucker

on the B-4 subway tunnel project by

Rob't McAlpine Company at Lansdowne

and Bloor Street. He was being paid

\$2.38 an hour.

On March 2nd 1964 on account of a

dispute over a foreman whom the men

considered to be inexperienced and

therefore a safety hazard. The men

on all three shifts working on the

tunnel section refused to go back

to work until this foreman was

replaced.

One week after the dispute started

Mr. Healy took up temporary employ-

ment with a lumber company at \$1.25

per hour in order to slide him over

until the strike was over. On his

first day, in the first five minutes

he was involved in an accident

resulting in a broken back and the

chances are that he may never walk

again."

And at this moment, two years later, he is still in the same position.

"As far as I can discover his rate



1 of compensation will be calculated
2 on his temporary job rate of \$1.25
3 per hour. This seems rather unjust
4 to me for several reasons. In the
5 first place as his compensation will
6 be calculated on his last four
7 paychecks. I think his McAlpine
8 pay checks should be taken into
9 account. Furthermore as there is
10 a limit to what an injured person
11 may draw on compensation, no matter
12 what their earnings were before
13 their accident. There should
14 be a minimum amount to be paid
15 to an applicant so that he can
16 live decently without being a
17 burden on his family and friends."

18 And possibly on the taxpayer as well.

19 "Based on \$1.25 per hour Chris Healy's
20 compensation will be roughly \$25.00 per
21 week. On this income it is difficult
22 to see how Chris Healy can exist
23 without being a burden on someone.
24 Therefore on humanitarian grounds
25 and the facts that I have stated I
26 hope it will be possible for you to
27 do something about this case."

28 Mr. Commissioner, the man is still in the
29 same position and he is still trying to exist between
30 welfare on \$25.00 per week. I think that this illustrates

the fact that his compensation should be based on either the previous twelve months or the system that is normally used. I think basing his compensation on an employer that he only worked for five minutes is not just in our view. It should be based on his previous earnings, the capacity he had for earning. He was a highly skilled worker underground.

Thank you, Mr. Commissioner.

MR. KOSKIE: In other words, Mr. Commissioner, if I may summarize, the Labourers' Union is requesting that when the question of compensation is considered, that perhaps it be considered over a period of months, notwithstanding the fact that this particular person may have been employed for one or more employers during that period of time. Perhaps if the Act were so worded it might be considered, over say the last six months and then this situation could have been avoided.

THE COMMISSIONER: As section 40 reads, the Board can do nothing else.

MR. KOSKIE: The way it reads, his claim is based on the \$1.25 an hour. I should point out, as a matter of interest to this Inquiry, Mr. Commissioner, that this person, Mr. Healy, was working a week before this incident took place for Robert McAlpine, as Mr. Cauley pointed out, as a mucker on the subway at Lansdowne and Bloor. The reason why he was not working for McAlpine at the time this incident took place was because of a strike, due to certain alleged unsafe working conditions. Here we have the ironic situation, Mr. Commissioner, where Mr. Healy was on strike because he and his



1 fellow workmen were protesting the existence of unsafe
2 working conditions and, a week later, while attempting
3 to recoup his wage loss because of the strike, he finds
4 himself involved in an industrial accident which, two
5 years later, he finds himself in the same position and
6 receiving very little money, if any, from the Workmen's
7 Compensation Board. I believe this is the type of situ-
8 ation, especially when one is concerned about safety -
9 and all these persons are - that one can see the unfair-
10 ness of section 40 and the burden that it places on Mr.
11 Healy.

12 MR. ESTEY: I take it you interpret
13 section 44 (2) under that circumstance, as not entitling
14 the Board to take into account the pay that he received
15 from the Robert McAlpine Company?

16 MR. KOSKIE: In this particular case, Mr.
17 Estey, the matter was gone into, not by myself, I should
18 add, but by the Labourers' Union and was discussed at
19 some length with the senior officials of the Workmen's
20 Compensation Board and it appears that the result of the
21 conversations was that he was not entitled to any more
22 than they had given him, notwithstanding the existence
23 of section 44 (2).

24 MR. ESTEY: I just wondered if that was
25 taken into account. It is at least arguable that that is
26 a way out, isn't it?

27 MR. KOSKIE: Yes, I would certainly agree.

28 MR. ESTEY: Anyway, you are saying if
29 that were clarified, you would not have the doubt?

30 MR. KOSKIE: Yes. Obviously, in the mind



1 of the Workmen's Compensation Board, they certainly had
2 some doubts about it.

3 MR. KOSKIE: Perhaps this would be of
4 assistance in this particular case, Mr. Commissioner. I
5 am reading from the letter dated October the 26th, 1965,
6 from The Workmen's Compensation Board, addressed to Mr.
7 Gallagher of the Labourers' Union in connection with this
8 claim, and part of it reads as follows:

9 "Although Mr. Healy was injured on
10 the first day of employment with this
11 particular company and although this
12 employment came about as a result of
13 a strike in his regular industry, his
14 rate of earnings has been calculated
15 in accordance with the provisions of
16 the Act, namely section 40 and section
17 44."

18 So it appears that they did take that into consideration
19 although the wage rate that he received was based upon
20 that which he was receiving at the time the accident
21 took place.

22 THE COMMISSIONER: Well, section 40
23 refers to temporary total disability. That is what
24 this man has.

25 MR. KOSKIE: I would think so.

26 MR. ESTEY: It is permanent, isn't it?

27 MR. KOSKIE: I don't know if it could
28 be classified as permanent. It may very well be class-
29 ified as permanent now.

30 MR. ESTEY: It is permanent, but it



1 doesn't make any difference, does it, because the perman-
2 ent section uses the average computation of the temporary
3 section. The real issue is whether or not you can find a
4 relation to Section 44 and the Board has said you can't.
5 That is the case in a nutshell, isn't it?

6 MR. KOSKIE: That is right.

7 MR. ESTEY: Before you leave that case, I
8 take it you have a history of what has gone on since the
9 time of the Board's ruling. I wonder if you could tell
10 the Commissioner what other benefits outside the Workmen's
11 Compensation Act, that someone in that position Mr. Healy
12 is in, receives? Can you get a report on it?

13 MR. KOSKIE: Perhaps Mr. Gallagher can
14 assist. He has more experience in this than I have.

15 MR. GALLAGHER: Mr. Commissioner, in this
16 case, to the best of our knowledge, the man is receiving
17 this \$25.00 and I think that he also has some assistance
18 from the Welfare of the City. We can, if necessary,
19 confirm this and bring it back at a later date, but my
20 last information was that he has to go to the Welfare.
21 In our view, it is a burden on the taxpayer that we think
22 is wrong. It is not just that the taxpayer should have
23 to pay, in our view, for this clear-cut accident, which
24 was established. The only point at issue is that he was
25 receiving \$1.25 an hour when previously he had been
26 receiving \$2.38 an hour.

27 MR. ESTEY: Which fund should it come
28 out of? Which fund do you think it should come out of,
29 the category or the class in which the last employer
30 contributes, or should it go back and come out of the



1 McAlpine category?

2 MR. GALLAGHER: We think if it came out
3 of the category in which he had been permanently employed,
4 he had been working for years as a mucker for McAlpine and
5 previous companies in the same category.

6 It is true, Mr. Commissioner, that McAlpine
7 in that category, might disagree because they might say
8 it is hardly fair that they should be assessed for an
9 accident that took place on some other job. I really am
10 placing the facts before you, Mr. Commissioner, and hope
11 that, with the assistance of the Compensation people, and
12 so on, these kind of things will be reviewed.

13 MR. KOSKIE: May I also point out to the
14 Commission, and to Mr. Estey, that section 44 (2) might
15 not, in this particular case, be the answer to this
16 problem. Looking it over, it does say that, regard may
17 be had to the average weekly or monthly amount that during
18 the twelve months prior to the accident was being earned
19 by a person in the same grade, employed at the same work.
20 I think, in this particular case, in Mr. Healy's case, I
21 don't think he was employed in the same type of work, in
22 fact I am pretty sure he wasn't. It was sort of a
23 temporary job that he had and was in no way related to
24 the type of work that he was doing with Robert McAlpine.

25 Section 42, sub-section 2 reads that it
26 does place certain limitations or restrictions on the
27 usefulness of such a section. Perhaps if it were made
28 much clearer, this problem would have been resolved.

29 MR. ESTEY: I said it was ambiguous.
30 The last part is why I asked you whether they quoted it



1 because it talks of an employer in the same grade. Whether
2 that means as Healy's trade as a mucker or whether it
3 means Healy's trade as something for that lumber company
4 which is ambiguous and I would ask you to consider that.

MR. KOSKIE:

5 As I say, it obviously was considered, but
6 perhaps not favourably from the point of view of our
7 client's position.

8 MR. ESTEY: The thing I am not sure about,
9 though, is that if two people had been hurt in that acci-
10 dent, Healy and somebody standing beside him, and the
11 other fellow had not been on strike with the McAlpine,
12 but had always been at the lumber company, you are saying
13 that Healy will get a better rate of compensation than
14 the fellow standing beside him, who received the same
15 blow from the same plank, because Healy had come from a
16 high paid company on strike, and the other fellow had
17 been there for 25 years. That is the thing that troubles
18 me.

19 MR. KOSKIE: Well, I would think this,
20 Mr. Commissioner, if this situation were to perhaps arise
21 in the courts, if these persons were injured and, through
22 no fault of their own but through the negligence of
23 either the employer or fellow employee, then I would
24 think that the claim which Mr. Healy would make, would
25 be for loss of wages; in other words, he would expect
26 to be able to go back to work for McAlpine after the
27 strike was over and resume a job which was paying at
28 least double the amount that he was receiving while
29 employed by the lumber company. So on that basis alone,
30 I think the courts would grant or award damages in a



1 higher amount than the other person.

2 MR. ESTEY: That is right but there is
3 nobody contributing on the higher amount at the time of
4 the accident.

5 MR. KOSKIE: I am sorry, I don't under-
6 stand that.

7 MR. ESTEY: There is no employer contribu-
8 ting to the fund at the higher amount, at the time of the
9 accident, is there? The final contributions are at the
10 low rate for this man. That is your trouble, isn't it?

11 MR. KOSKIE: Yes, we still have to deal
12 with the general compensation principle. As I say, we
13 take that into consideration, but the fact that this man
14 is deprived of any right of action that would balance it
15 off the other way, I submit.

16 MR. GALLAGHER: Mr. Commissioner, on the
17 basis of the question by Mr. Estey regarding the two
18 people working for the same company and both have an
19 accident in presenting this case, we did not try to hide
20 anything at all. We could have deleted the words "on
21 strike" and could have put other connotations on it. We
22 wanted to be absolutely frank here in what we were doing.
23 I think that the basis that the men were employed on
24 these jobs, they believed that their compensation is
25 based on either the last four weeks prior to their acci-
26 dent or, in some cases, a year. To this man, and to
27 people like him, who do not fully understand, perhaps
28 myself included, the whole ramifications of the Act --
29 although I try to do the best I can -- it seems that on
30 the other situation, on the McAlpine job, there could



1 have been an accident a week earlier there to a man other
2 than Mr. Healy -- and this is all very difficult to under-
3 stand. Generally speaking, we are informed it is based
4 on their earnings, over a period of time. This is the
5 problem we are trying to bring to the attention of the
6 Workmen's Compensation Board. We know there are very
7 great difficulties about the assessments, which our people
8 don't fully understand, but we feel that this man has been
9 earning money for years at a certain rate and he expects
10 to be compensated on the basis of what he earns over that
11 time. If we could have a clarification of that, or have
12 a look at it taken by the Commission -- I think it needs
13 looking at, at least.

14 MR. ESTEY: What you are saying, then, is
15 that if Section 44 (2) had a third alternative, that is
16 where there is a shortage of time so that you can't get an
17 average estimate, then you go to other work of the same
18 class, engaged by other employers, and you say there
19 should be a third alternative, or perhaps a substitute
20 second alternative in which the average 12 month period
21 includes all employers.

22 MR. GALLAGHER: Yes.

23 MR. ESTEY: That would raise the thorny
24 problem of how you would compensate the fund when the
25 pay-out is at their high end, with the low contribution.

26 MR. KOSKIE: I think it is obvious, Mr.
27 Commissioner, and Mr. Estey, that the legislature is
28 aware of the problem because they have enacted section
29 44 (2), but I do not think they have gone far enough,
30 as I have pointed out in this particular example.



1 If I may deal next with the question of
2 partial disability allowances, and this will be found on
3 page 11 of the brief, at paragraph 3, and this is headed,
4 "Light Duty Categorization".

5 Local 183 of the Labourers' Union represents
6 workmen engaged primarily in heavy construction. Section
7 41 of the Act provides for the reduction of a partially
8 disabled workman's compensation payments in proportion
9 to the average amount that he is earning or is physically
10 capable of earning, as determined by the Board. The
11 present practice of the Board, upon a doctor finding that
12 a totally disabled workman is improving and able to do
13 some light work, is to reduce the workman's benefit by
14 50 per cent or in some cases by a greater amount. The
15 sole criterion in these various determinations by the
16 Board would appear to be whether the workman is physically
17 capable of earning a particular amount of money engaged in
18 some form of "light duty". Little consideration, if any,
19 is given to the question of whether light duty is, in
20 fact, available. And I may add there, and where the
21 person involved and the workman has sufficient training,
22 to be able to perform the light duty work which may be
23 available to him. This works a particular hardship on
24 members of our union since there is virtually no "light
25 duty" in the heavy construction industry.

26 Thus, many of our men in the past have
27 found themselves with their compensation payments cut in
28 half, yet still unable to obtain any light duty employ-
29 ment. The accepted procedure for a worker in this
30 predicament is to apply for Unemployment Insurance



1 benefits. Often, these benefits are of an amount insuf-
2 ficient to offset the decrease in compensation. In one
3 situation in particular, a member of our union was given
4 a "light duty" designation by his compensation doctor, yet
5 denied any benefits by the Unemployment Insurance adminis-
6 trators because, in their opinion, he was medically unfit
7 for any work. I point out that we will have this witness
8 with us today.

9 In situations where a workman is in-
10 eligible for Unemployment Insurance benefits, he must
11 turn to the City Welfare Department who demand that he
12 assign his Workmen's Compensation benefits to them in
13 exchange for welfare payments; for some strange reason
14 the Welfare Department is often able to draw greater
15 benefits from the Board than the workman himself. We beg
16 the Commission's indulgence to hear at least one of our
17 workmen who has suffered extreme financial and physical
18 hardship under this provision of the Act.

19 We agree with the policy of Section
20 41 in attempting to force physically improved workmen
21 back to work for rehabilitory purposes and to eliminate
22 abuses by tardy workmen. However, we see absolutely no
23 justification in decreasing benefits with a "light duty"
24 designation, when in fact no light duty is available.
25 Therefore, we would submit that, unless an injured work-
26 man already has secured light duty employment, or the
27 Board is willing to find him such employment or to
28 arrange for his retraining for other employment, he should
29 receive full benefits for total disability until such
30 time as he is able to return to his original employment.



1 Accordingly, we would recommend the amendment of section
2 41 to conform with the above.

3 Mr. Farrell is with us today, Mr.
4 Commissioner, and he is the person we mentioned in our
5 brief. Perhaps I will file with the Commission at this
6 time, a copy of a record of proceedings and decision of
7 referees of the Unemployment Insurance Commission, in the
8 case of Mr. William Farrell. This report is dated March
9 15, 1966.

10 EXHIBIT NO. 13:

11 A copy of a Record of Proceed-
12 ings and Decision of the
13 Referees of the Unemployment
Insurance Commission, dated
March 15, 1966

14 MR. KOSKIE: Mr. Gallagher was per-
15 sonally involved in this claim and I will ask him to
16 advise the Commission of the facts in this case.

17 MR. GALLAGHER: I will be very brief,
18 Mr. Commissioner. We have Mr. Farrell here and at this
19 particular time he had received an injury to his hand and
20 was off for some considerable time. Eventually, he was
21 designated fit for light duty and finally was cut down
22 to 25 per cent and was advised by the Compensation Board
23 that he could apply for Unemployment Insurance. This, he
24 did. He was turned down by the Unemployment Insurance,
25 and we took this matter -- we appealed on this matter, and
26 I have here a letter from the Appeal Board from the
27 Unemployment Insurance and I would like to bring it to the
28 attention of the Commission. I will just take a very
29 small part of it.

30 MR. KOSKIE: This is the document



1 just filed before the Commission now.

2 MR. GALLAGHER:

3 "It was pointed out that this claimant
4 was what could be called, a 'top' man
5 in his field, used to responsibility
6 and much sought after because of his
7 talents in the construction field.

8 His injury removed him from his usual
9 labours, and notwithstanding - (this
10 is the part I would like to emphasize)
11 the medical report of the Workmen's
12 Compensation Board, there is absolutely
13 no doubt that the claimant was not
14 fully capable of returning to his
15 former employment."

16 The situation is that the Compensation
17 Board said he was fit and the Unemployment Insurance said
18 he was not fit and between the two, he got no compensa-
19 tion.

20 "The claimant recognized this limitation,
21 in part, by stating that in his usual
22 occupation he was paid a rate of \$3.09
23 per hour, and he was willing to drop down
24 to the lowest rate in his occupation
25 field, namely: \$2.50 per hour, as a
26 labourer."

27 These factors ended up that he was dis-
28 allowed the Unemployment Insurance -- I want to be
29 perfectly frank -- that \$2.50 per hour was also a major
30 factor in this. Our point is that inbetween the two, one



1 the Federal Department and the other a Provincial Depart-
2 ment, this man received absolutely nothing. Were you
3 reinstated eventually?

4 MR. FARRELL: No.

5 MR. KOSKIE: Mr. Commissioner, I have with
6 me, Mr. Michael Lynch, who is a member of the Labourers'
7 Union and who wishes to present a situation involving
8 himself.

9 MR. ESTEY: Before we leave Mr. Farrell's
10 case, I take it there was no appeal under the Workmen's
11 Compensation appeal procedure, about his classification?

12 MR. GALLAGHER: As a matter of fact, we
13 appealed before the Chairman of the Board on this and
14 other matters, and we have been before the Board on
15 several occasions, different officials on this matter.
16 The view first taken by the officials of the Board was
17 that they did not want to hear anything about what the
18 Unemployment Insurance people said. They were not inter-
19 ested in what the Unemployment Insurance people said.
20 Therefore, they said as far as they were concerned, as
21 long as the medical evidence was that he was fit to work,
22 you go and fight it out yourself with the Unemployment
23 Insurance and don't involve the Workmen's Compensation
24 Board. This may seem rather shocking but I assure you,
25 I appeared before a number of the officials and was will-
26 ing to talk to them again about this matter. I had a
27 special meeting with the Chairman of the Board and tried
28 to point out the situation and they kept repeating to me
29 that as far as they were concerned, the medical evidence
30 was that he was fit and, of course, as you see here in



1 this written document, the Unemployment Insurance said he
2 is not fit.

3 MR. ESTEY: I have not found that. Can
4 you tell me what part of the report on the claim says that?

5 MR. KOSKIE: About halfway down the page
6 under the topic headed, "Statement of Facts", the third
7 paragraph, and it says here his injury removed him from
8 his usual labours, notwithstanding the medical report of
9 the Workmen's Compensation Board, there is absolutely no
10 doubt the claimant was not fully capable of returning to
11 his former duties.

12 MR. ESTEY: That part is clear, but where
13 do you find the statement by the U.I.C. that he was capable,
14 which is what I thought Mr. Gallagher just said.

15 MR. KOSKIE: I don't think that is shown
16 here but this was the basis of the reason for applying
17 for Unemployment Insurance, because they were of that
18 opinion.

19 MR. GALLAGHER: This claim was rejected
20 right here.

21 MR. ESTEY: Now, let us stay on the simple
22 little facts. The first fact is that the Board said he
23 was fit for light duty -- the Workmen's Compensation Board
24 said that; is that right?

25 MR. KOSKIE: That is right.

26 MR. ESTEY: The second statement made, and
27 I simply want to know what it is based on, is that the
28 Insurance Commission Board of Referees found that he was
29 fit for some kind of work.

30 MR. KOSKIE: They went further than that --



1 his former employment.

2 MR. ESTEY: Where do I find that?

3 MR. KOSKIE: "There is absolutely no doubt
4 that the claimant was not fully capable of returning to his
5 former employment."

6 MR. ESTEY: All right, that is the statement
7 you are relying on, and there is no more; is that it?

8 MR. KOSKIE: Yes.

9 MR. ESTEY: Because I don't really think
10 that sets up a conflict. That is a repetition of the fact
11 that the Workmen's Compensation Board said he was fit for
12 light duty; that is all. There may be something that you
13 have not come across in the file.

14 MR. KOSKIE: I think, Mr. Estey, that as
15 a result of Mr. Gallagher's appearance before the Unemploy-
16 ment Insurance Commission on this, and this is the fair
17 interpretation put on that statement.

18 MR. ESTEY: What you are reading is a
19 summary of what Mr. Gallagher said to the Commission.

20 MR. KOSKIE: I believe this part here was
21 stated by the Unemployment Insurance Commission.

22 MR. GALLAGHER: That is not my statement.

23 MR. ESTEY: The one after it is obviously
24 yours and the one before it is yours, and it is under the
25 heading of your name, and I take it the next paragraph is
26 you. All of that is a statement of fact, and I would like
27 to know if this is a case of conflict, and if it is, how
28 do you document it because this piece of paper does not
29 do it. If there is more, I think we should have it.

30 MR. KOSKIE: That is the only evidence I



1 believe we have in the file.

2 MR. GALLAGHER: I don't quite follow Mr.
3 Estey in his question to me that this is my statement.

4 MR. ESTEY: I am only reading the document,
5 Mr. Gallagher. The document gives you the credit for
6 giving the statement of facts. There are three paragraphs,
7 one after the other, in which you are mentioned. You are,
8 presumably quoted. Now, if it/^{is}not you who is being quoted,
9 that's what I would like to know. But surely, Mr. Koskie,
10 there is another letter or something from the Board.

11 MR. GALLAGHER: I am quoted where it says,
12 "it was pointed out this claimant was what could be called
13 a 'top' man in his field" -- this was a statement from me
14 -- "used to responsibility. His injury removed him from
15 his usual labours".

16 MR. ESTEY: You said that?

17 MR. GALLAGHER: Yes.

18 MR. ESTEY: And the next sentence, you said?

19 MR. GALLAGHER: I did not say this at all --
20 this is the statement I can't understand, "and notwith-
21 standing the medical report of the Workmen's Compensation
22 Board, there is absolutely no doubt that the claimant was
23 not fully capable of returning to his former employment".
24 That was not my statement, even though it is put in the
25 statement of facts. Perhaps I should have challenged this
26 at the time.

27 MR. ESTEY: You should have challenged
28 this document. You have put this document forward as proof
29 of --

30 MR. GALLAGHER: But notwithstanding that



1 this is the report from the people who were writing this
2 up; not me.

3 MR. ESTEY: Anyway, the result of this is,
4 I take it, that the Board says light duty and the Commission
5 said, "You don't get any unemployment insurance from us
6 because you don't drop your wages to the level that we can
7 spot you in".

8 MR. GALLAGHER: \$2.50 and in addition, of
9 course, there is the medical evidence.

10 MR. KOSKIE: Mr. Farrell is here and I have
11 just questioned him on this point, and you can if you wish,
12 and he says at the time they appeared before the Unemploy-
13 ment Insurance Commission, he himself was physically unable
14 to resume his former employment. This is what Mr. Farrell
15 has advised me.

16 MR. ESTEY: My first question got lost in
17 the shuffle there. No appeal was taken in the formal
18 sense to the Workmen's Compensation Board on this medical
19 question of light duty?

20 MR. KOSKIE: There was a letter written by
21 Mr. Farrell himself when he said he would appear before the
22 Appeal Tribunal. We have that letter in the file, but it
23 does not appear as if he did or whether there was any hear-
24 ing set by the Appeal Tribunal.

25 MR. ESTEY: Did we get the number of this
26 Workmen's Compensation Board file?

27 MR. KOSKIE: It is claim number 6091347,
28 William Farrell.

29 MR. ESTEY: Thank you.

30 If I may resume, Mr. Commissioner, with Mr.



1 Lynch.

2 MR. LYNCH: Thank you, Mr. Commissioner,
3 for giving me this opportunity to speak. I have prepared
4 a statement and there is a copy here if you wish it. In
5 fact, there is also another copy.

6 I should like to say, Mr. Commissioner, that
7 I was hurt two years and seven months ago and I would like
8 to bring forward some suggestions and observations I have
9 made in the time that I have been on compensation and what
10 has happened to me. I hope I don't detain you too long.

11 THE COMMISSIONER: These are pursuant to
12 the submissions that are being made in here, are they?

13 MR. KOSKIE: Yes, they are, Mr. Commissioner.

14 THE COMMISSIONER: I don't want to go into
15 an appeal from the Board on a decision in a particular
16 case. There is nothing of that kind?

17 MR. KOSKIE: No, this is just a situation
18 dealing with partial disability allowances, Mr. Commissioner,
19 and not really in the form of an appeal at all. It per-
20 tains to the topic which we are dealing with now.

21 MR. LYNCH: I have made some remarks, sir,
22 if I may read them to you.

23 Beyond all shadow of doubt the majority of
24 injuries sustained by workers in this province are to
25 workers employed in heavy industry with construction
26 workers topping the list.

27 Construction workers in Ontario are repre-
28 sentatives of every nationality but for the most part are
29 unskilled and non-English speaking Italian immigrants.
30 Their livelihood, therefore, depends on manual labour



1 alone which necessitates a first class physical condition.

2 In the construction industry there is no
3 such thing as light work. Workers who are injured must
4 completely rely on their compensation payments until such
5 time as they are physically able to return to the job they
6 were doing at the time of their accident.

7 Issuance of partial disability payments are
8 often delayed while awaiting doctors' reports. An injured
9 worker on partial payments finds himself in receipt of an
10 irregular, low income causing him anguish, worry and quite
11 often extreme financial difficulties. Often partial dis-
12 ability payment forces an injured worker to return to his
13 former employment before he is physically fit and by doing
14 this he exposes himself to further injury and becomes a
15 safety hazard to his workmates.

16 It has been the recognized practice of
17 persons receiving 50 per cent compensation payments to
18 apply for Unemployment Insurance benefits because the
19 Workmen's Compensation Board find that these workers are
20 capable of doing work of a modified nature but make no
21 stipulation as to the type of work he can do. As an
22 example a man with a leg injury could take phone messages
23 or dispatch taxis - but if he cannot read, write or speak
24 English, he cannot do this light work. The question im-
25 mediately arises at the Unemployment Insurance Commission
26 as to whether or not the worker is eligible for benefits.
27 In order to draw unemployment benefit a man must be able
28 to work. If he is able to work why is he then drawing
29 50 per cent Workmen's Compensation? Usually a great deal
30 of correspondence passes back and forth between these two



1 agencies before a worker is classified as eligible for
2 Unemployment Insurance. While this correspondence is pass-
3 ing back and forth, the worker is left waiting, wondering
4 and worrying.

5 After another short period of time the
6 worker's compensation payments are further reduced to 25
7 percent of his original entitlement and often without the
8 authorization of his medical practitioner.

9 Even with unemployment insurance benefits
10 this is quite often not enough to sustain him, especially
11 a married man with a family or his parents to support.

12 Should the worker's Unemployment Insurance
13 run out he is forced to apply to his district welfare
14 office for assistance. Since he cannot receive public
15 welfare and Workmen's Compensation benefits, he is obliga-
16 ted to assign his compensation benefits over to the welfare
17 board.

18 At this time I should like to point out
19 that when the worker was first injured he was granted
20 workmen's compensation because it was decreed that he
21 could not work at his place or type of employment but the
22 worker now finds that he has become the responsibility of
23 his local welfare department and therefore being supported
24 by the local taxpayer and he is now in no receipt of work-
25 men's compensation to which he is morally entitled because
26 he is still unable to return to his own type of employment.
27 He is also a nuisance to the welfare office who claim the
28 worker is not their responsibility but that he and his
29 family are the responsibility of the Workmen's Compensa-
30 tion Board.



1 At this time, Mr. Commissioner, I should
2 like to refer to my own case history which is a proven
3 example of what can and does happen to injured workmen.

4 I was employed by C.A. Pitts, contractors,
5 on the east-west subway. About 1:30 p.m. on February 10,
6 1964 I was injured. I had absolutely no difficulty in
7 establishing my claim as it was a cut and dried case. I
8 suffered a compressed fracture of the left heel bone. After
9 several changes of casts, I was sent to the Workmen's
10 Compensation Board Hospital and Rehabilitation Centre. In
11 the early part of August, 1964, Dr. Freid informed me that
12 he was discharging me from the Centre. It was his opinion
13 that there was nothing further that could be done for me
14 and I was discharged classified as able to do light work.
15 Before leaving the Centre, I was interviewed by a vocation-
16 al rehabilitation officer who asked me if he could phone
17 my company to make arrangements for me to be returned to
18 light duty with them. He therefore, phoned an executive
19 at the head office of C.A. Pitts who told the rehabilita-
20 tion officer that he would make arrangements for me to do
21 light work and I was to return to work on August 17.

22 At this point I was doubtful of what light
23 work could be found on such a heavy job as building a
24 subway, therefore, I approached the Business Manager of
25 my local Union, Mr. G. Gallagher, Local 183, Labourers'
26 Union, to ask his opinion as to my position and his
27 advice as to what procedure I should follow. He very em-
28 phatically advised me that I must report to the job and
29 make every effort to do whatever work was made available
30 to me.



Therefore, on August 17, 1964 I returned to C.A. Pitt - Bloor subway project at 7:30 a.m. The management informed me that they were unaware of my intended return to work, that no arrangement had been made for me and, indeed, they had no such thing as light work. I was given the only job available which was carrying heavy hardwood timbers over extremely rough ground, which is exactly what the doctor advised me to avoid. Under severe stress and pain I carried out these duties until noon, at which time I reached the point where I could not even support my own weight, let alone walk. I reported to the safety engineer, Mr. J. Sullivan, who drove me to my doctor's office in his own car. My doctor, Dr. Naiberg, expressed astonishment that I had been returned to work at all and especially construction work and especially by a Compensation Board doctor. While in Dr. Naiberg's office, I had removed my work boot and was unable to put it on again because of the extreme swelling and pain in my foot. Dr. Naiberg phoned the Supervisor of Unit 6 at the Workmen's Compensation Board offices and the Supervisor advised Dr. Naiberg to inform me that I would be retained on 50 per cent for a further period of 4 weeks. Since I was discharged from the Centre as fit for light work I was not eligible to be returned to full benefit. In my case, 50 per cent benefit totalled \$78.90 every two weeks. At the end of the four weeks, Dr. Naiberg was to send another report on the condition of my foot. I now applied for Unemployment Insurance Benefits and after much difficulty, and many phone calls and after having to obtain a special letter from the Workmen's Compensation Board, I was



1 successful in receiving unemployment benefits.

2 I kept returning to Dr. Naiberg and he, in
3 turn, kept sending in his reports still stating that I was
4 unable to work. Near the latter part of December, I was
5 advised by mail by the Compensation Board to appear at
6 their head office to be seen by a Board doctor. He made
7 an appointment for me to be seen by an orthopaedic special-
8 ist, Dr. Wiley, of the Toronto Western Hospital, who, after
9 examining me, advised me that I should undergo surgery for
10 fusion of the ankle, preventing inversion and eversion
11 movement. When I was admitted to the Toronto Western
12 Hospital on January 27th, 1965, I was returned to 100 per
13 cent compensation and I, therefore, in turn, informed the
14 Unemployment Insurance office, who cancelled my claim with
15 them. Near the end of February, 1965 I returned to my
16 home with my leg in a cast and after several changes of
17 this cast, was again admitted to the Workmen's Compensa-
18 tion hospital in May of 1965 and again discharged in
19 August of 1965, classified as being unfit for any type
20 of construction work.

21 Before leaving the W.C.B. Rehabilitation
22 Centre, I was given an aptitude test which indicated
23 that I would be suitable for retraining as a dental
24 technician. Upon dismissal from the Centre I was advised
25 that a rehabilitation officer would call at my home to
26 make arrangements for this training and at this point, I
27 was discharged from the Centre on August 17th, 1965. My
28 compensation was reduced to temporary partial disability
29 on September 3rd, 50 per cent. A month elapsed before my
30 rehabilitation officer was successful in finding a dental



1 laboratory willing to accept me as a trainee. On October
2 5th, I started training but since I had been on only partial
3 disability payments, I found myself in need of financial
4 assistance. As my unemployment insurance benefits had been
5 all used I had no choice but to apply for public assistance.
6 The local welfare office agreed to help me until such time
7 I was again in receipt of full compensation comprised of
8 partial disability payments and rehabilitation allowance.
9 I started my training but found this type of work quite
10 unsuitable for me in many ways. My compensation cheques
11 were so irregular and in such undependable amounts that it
12 caused complete chaos in my household. And in the middle
13 of October I was informed that my disability payments were
14 cut to 25 per cent or a total of \$19 per week. This cut
15 down was made without any authorization from a doctor as
16 to my physical condition.

17 I should like at this time to present a
18 letter to substantiate my statements. The letter is of a
19 later date and is from the Workmen's Compensation Board to
20 myself and is in itself, self-explanatory.

21 MR. ESTEY: What disability payment did
22 you end up with?

23 MR. LYNCH: I am still on disability pay-
24 ment right now?

25 MR. ESTEY: What is the percentage now?

26 MR. LYNCH: 25 per cent.

27 MR. ESTEY: One other question. You used
28 the term "rehabilitation allowance". Was that an allow-
29 ance paid by the Workmen's Compensation Board?

30 MR. LYNCH: It is paid by a department



1 within the Board, yes, sir.

2 MR. ESTEY: By the Board?

3 MR. LYNCH: Yes.

4 MR. ESTEY: It comes from the Workmen's
5 Compensation Board?

6 MR. LYNCH: Yes.

7 MR. KOSKIE: Perhaps we can file, Mr.
8 Commissioner, a copy of a letter from the Workmen's
9 Compensation Board, dated December the 15th, 1965, addressed
10 to Mr. Lynch which, in effect substantiates the facts, sir
11 that Mr. Lynch has recited in his submissions to you.

12 EXHIBIT NO. 15 Letter (copy) from The Workmen's
13 Compensation Board, dated
14 December 15th, 1965 addressed
to Mr. Lynch.

15 THE COMMISSIONER: I think we will adjourn
16 for ten minutes. It is very hot in here.

17 --- Short recess.

18
19 MR. ESTEY: Mr. Lynch, can you give us
20 your compensation number?

21 MR. LYNCH: Yes, sir. 6015836.

22 I have a letter here, but I do not intend
23 to read it.

24 THE COMMISSIONER: We have a copy of it.

25 MR. LYNCH: On October 1st, 1965, the
26 owner of the house I rented gave me a 30 day notice to
27 vacate. With no money, no place to move and nothing
28 dependable to work on my nerves broke and I committed
29 myself to the Ontario Hospital, Queen Street West, and
30 informed the W.C.B. of my action. A copy of the letter is



1 here for your inspection if you so desire. While I was in
2 the Ontario Hospital, my family received welfare payments
3 and the welfare department received my partial compensa-
4 tion awards. On December 5th, I was discharged from the
5 Ontario Hospital and immediately contacted my rehabilita-
6 tion officer at the Workmen's Compensation Board. It was
7 decided to change my training to that of a stationary
8 engineer and I started training on December 24th, 1965.
9 But it was necessary to remain on welfare until the first
10 week in January when my re-training allowance came through.

11 Referring back to the period of time be-
12 tween September 3rd, 1965 and the first week in January,
13 1966 and to the payments made during this period of time,
14 I should like to point out the chaos it caused to myself,
15 my family and household by the irregularity and inconsist-
16 ency of my compensation awards which is the result of the
17 way the Compensation Act is interpreted as it now reads.

18 In summary of the statements I have made
19 which I know to be true and are in no way exaggerated, I
20 wish to point out that under the present system the injured
21 worker is caused to suffer extreme financial difficulties
22 further to his injuries and this is not in keeping with the
23 true principles of compensation.

24 Taxes (unknown to the taxpayer) are being
25 used in the form of Public Welfare to take care of the
26 injured workman. I would not care to hazard a guess as
27 to how many millions of dollars this may amount to each.
28 This, again, is most unjust especially to the taxpayers.

29 The U.I.C. fund is also being drained by
30 workers on partial disability allowance where it is



1 questionable if they qualify for benefit.

2 In conclusion I respectfully recommend
3 that this partial disability allowance clause be omitted
4 and the injured worker be retained on 100 per cent compen-
5 sation benefit until he be able to return to the type work
6 he was doing when injured, or, until such time he be
7 retrained in some other field and is able to take his
8 place on the province work force.

9
10 EXHIBIT NO. 14: Statement/submission of Mr. Lynch

11 MR. LYNCH: That is all I wish to say
12 in my submission.

13 MR. ESTEY: Who paid that second rehab-
14 ilitation allowance you have just referred to a moment
15 ago when you were training as a stationary engineer, who
16 paid for that rehabilitation allowance?

17 MR. LYNCH: The Workmen's Compensation
18 Board.

19 MR. ESTEY: Again?

20 MR. LYNCH: Yes.

21 THE COMMISSIONER: Thank you, Mr. Lynch.

22 MR. KOSKIE: Now, Mr. Commissioner, the
23 Labourers' Union has found in many cases that when
24 persons have been catagorized as having a partial dis-
25 ability only and their compensation payments are cut
26 down various percentages because of the fact that light
27 duty is available to them, the problem of retraining
28 comes in and the labourers have found that many of their
29 members are not retrained sufficiently to enable them
30 to take any light duty jobs that may be available to them.



1 For example, we have a case here involving
2 - I apologize for my pronunciation - Giulio Osti, and
3 this is Workmen's Compensation Board claim number 5997687.
4 Now, this person, an elderly man of the age of 58, was
5 injured in the course of his employment and, at one stage,
6 the Board declared that his compensation should be cut
7 down because light duty was available to him. In fact,
8 it was found that Mr. Osti was incapable of doing any
9 other work, or work other than that which he was accustomed
10 to doing in the construction industry. Furthermore, that
11 Mr. Osti had always worked in construction, I should say
12 he was an immigrant from Italy, and he did not speak
13 English very well and he found it practically impossible
14 to obtain any other job because of the fact that it
15 involved the use of the English language. Also, because
16 he did not have any other skills than those which were
17 associated with the construction industry. But, notwith-
18 standing these facts, Mr. Osti, his compensation was
19 still cut down because it was alleged that light duty
20 work was available to him.

21 Now, Mr. **Stefanini**, Mr. Commissioner, who
22 is a representative of the Labourers' Union, is personally
23 familiar with this case and I believe he has some comments
24 to make.

25 **MR. STEFANINI:** Yes. Mr. Commissioner,
26 I know Mr. Giulio Osti for quite a number of years. Mr.
27 Osti is the kind of a man who just would not feel happy
28 unless he is working. He was a foreman in the subway, a
29 sub-foreman, and he had his injury, a broken ankle, and
30 he has never recovered since the day of the accident. He



1 was operated on, I believe, twice, but his foot is still
2 swollen, still tender and he cannot go back to his former
3 employment.

4 I don't know how many months after he was
5 on compensation, but his benefits were cut 50 per cent and
6 at this stage we appealed to the Review Committee, the
7 decision of the Board and myself, before appealing, making
8 the appearance, I went with Mr. Osti to a specialist and
9 asked Dr. Kubler, what was his opinion of Mr. Osti's
10 ankle. Dr. Kubler, who was the specialist, stated emphat-
11 ically to me that it was not possible for Mr. Osti to go
12 back to work in the subway, on construction and he said,
13 "The only job he can do is a sedentary job like on a desk
14 or a press operator, but he absolutely couldn't stand up
15 for a long time".

16 Unfortunately, as our solicitor pointed out,
17 Mr. Osti is 58 years of age and he has a limited knowledge
18 of the English language and does not have any other skill
19 and, as a result, he could not absolutely get any light
20 job or any sedentary job that he could do. The Compensa-
21 tion Board tried to assist him to, the Rehabilitation
22 Branch of the Compensation Board, tried to assist Mr. Osti
23 to find employment and they found employment in cleaning
24 a factory, janitor work, and even that was too heavy. Mr.
25 Osti tried for two or three nights and he could not per-
26 form it and he quit. As a result, his compensation now
27 is about 12.5 per cent. He was trained by the compensa-
28 tion, at the present he is training in an Italian organ-
29 ization to train immigrants but he went there out of his
30 own free will and it was not with the W.C.B. help



1 As a result of my appeal, we also went to
2 the Workmen's Compensation Board and he was examined by
3 a doctor. This doctor said, I believe it was Dr. Burkett,
4 stated to me and Mr. Osti that, in his opinion, Mr. Osti
5 should go back to work in construction. I asked him if
6 he knows anything about the subway work and he said, no,
7 but in his opinion he could go back and do his former job.

8 MR. ESTEY: What was that last doctor,
9 Burkett?

10 MR. KOSKIE: Perhaps it is spelled B-u-r-
11 k-e-t-t.

12 The importance here, Mr. Commissioner, that
13 the Labourers' Union wishes to stress, is the fact that
14 the Board finds these persons are capable of doing light
15 duty work, but the problem arises and, especially so with
16 the members of the Labourers' Union, that there is no
17 light duty work available to them and, if there is not
18 this type of work available to them, notwithstanding that
19 fact their compensation is still being reduced. Of course,
20 this brings in the element of retraining and these persons
21 must be retrained before they are in position to be able
22 to take on some of this light duty work, especially so
23 when we are dealing with a large section of the population
24 who do not speak English and, of course, this makes the
25 retraining, perhaps, a little more difficulty. Nonetheless,
26 it is still necessary. These are some of the problems
27 that labourers have encountered with respect to light
28 duty.

29 Now, we have another instance, Mr. Com-
30 missioner, dealing with Mr. Norman Pike. Mr. Gallagher



1 can assist on this particular case.

2 THE COMMISSIONER: The last one you men-
3 tioned was a case where the Board exercised its discretion
4 and made a decision and is not one where I think I should
5 intervene, or I don't think it would help you very much,
6 the last one.

7 MR. KOSKIE: It is not a matter of the
8 discretion. We appreciate the Board does have the dis-
9 cretion to say that this person can take on light duty
10 work.

11 THE COMMISSIONER: They told him he could
12 go back to construction, not to light duty work.

13 MR. KOSKIE: They cut his claim down also
14 because they said light duty work was available.

15 MR. STEFANINI: It is true that the
16 compensation doctor said that he could go back to construc-
17 tion. However, the specialist, the doctor who operated on
18 him, said quite emphatically, he was not fit to go back
19 to construction anymore.

20 MR. KOSKIE: Mr. Commissioner, the particu-
21 lar claim which I am dealing with now, involving Mr. Pike,
22 is a situation where Mr. Pike's compensation was reduced
23 by 50 per cent because of this light duty provision in
24 the Act. Now, Mr. Pike's claim is number 6292362. Mr.
25 Pike was scheduled to be here today, Mr. Commissioner, but
26 unfortunately was involved in some urgent matter and could
27 not attend. We hope to perhaps produce him later in our
28 submissions with respect to accident prevention. Very
29 briefly, Mr. Pike was a foreman and with the Robert
30 McAlpine Company and while employed by this company, he



1 lost the sight of his right eye and, in accordance with
2 the sections of the Workmen's Compensation Act, Mr. Pike
3 received, initially, compensation in the amount of \$86.54
4 and he got this for approximately seven to eight months
5 and then, shortly after, his compensation was reduced by
6 one-half to \$46. The reason why it was reduced, as I
7 understand it, was because the Board said that he was
8 capable of performing light duty work.

9 Now at this time, Mr. Pike had already
10 incurred several debts in that he had purchased a house
11 and he had a family and had certain other financial ob-
12 ligations. I should point out that, at the time Mr. Pike
13 lost the sight of his eye, or just prior to, his income
14 was \$10,000 a year and because of the compensation being
15 reduced to \$46 a week, this, of course, imposed a serious
16 burden on he and his family.

17 In this case, the Board would not retrain
18 him. Mr. Pike appears, in my opinion, to be able to be
19 retrained. He is a young gentleman, in his middle thirties,
20 but the Board refuses to retrain him. On the other hand,
21 they were still taking the position that they were going
22 to reduce his compensation by one-half. At the time
23 his compensation payments were reduced to one-half, no one
24 had offered him a job, a light duty job, nor was he able
25 to obtain one, even though he attempted to do so. Not-
26 withstanding these facts, the Board, nevertheless, reduced
27 his compensation payments.

28 He was offered a job with the Robert Mc-
29 Alpine Company again, his former employer, but the job
30 that he was offered was as a foreman. Now, because Mr.



1 Pike sustained his injury while he was a foreman, he, of
2 course, was somewhat reluctant to repeat this incident and
3 therefore, he was unwilling to take a job as a foreman
4 because he still had his one eye left.

5 THE COMMISSIONER: I thought you said he
6 had been a foreman and was offered a job as a foreman?

7 MR. KOSKIE: Yes, he was, but he could
8 not take this because of the fact he only had one eye and,
9 of course, he was concerned about protecting the one eye
10 he had left. This is how he sustained his previous injury,
11 as a working foreman. Notwithstanding this fact, the
12 Board, as I say, refused to retrain Mr. Pike so that he
13 could take on another job which would, eventually, enable
14 him to earn at least, approximately what he was earning
15 at the time the incident took place.

16 I point out this example, Mr. Commissioner,
17 because of the importance of the retraining program to many
18 of these persons. We say that a retraining program should
19 be brought into effect and should at least be attempted
20 on these persons, prior to their compensations being
21 reduced. Mr. Gallagher wishes to add a few points on
22 that case. He is personally familiar with it, Mr. Com-
23 missioner.

24 THE COMMISSIONER: If we are going to
25 hear the man, himself, later --

26 MR. KOSKIE: He may not be here, Mr.
27 Commissioner.

28 THE COMMISSIONER: Well, I probably wont
29 need to hear him if you cover it all.

30 MR. GALLAGHER: Mr. Commissioner, I think



1 it would be advisable if this man were seen. We realize
2 you have given us a great deal of leeway today and we
3 appreciate it very much. The only point I am going to add
4 is a brief one and it is that in the case of Mr. Pike, he
5 came from Newfoundland and I don't know what the educational
6 requirements are for leaving school up there, and I won't
7 bother the Commission about that, but this man is capable
8 of retraining, and if you saw him, you would realize it
9 very quickly. He is a highly intelligent man and came from
10 Newfoundland and established himself as a top-notch, lead
11 miner, which is his proper designation in the subway. He
12 is really an excellent type who should be given a chance
13 to retrain. Mr. Jeune of the Compensation Rehabilitation
14 Department stated that the reason it would be impossible
15 to retrain Mr. Pike was because it was too costly and
16 impractical, that his schooling in Newfoundland was so low
17 that it would take years to retrain this man. They per-
18 sisted in sending him back to a job which I want you to
19 understand, as a lead miner, is not like an ordinary,
20 working foreman. A lead miner is highly hazardous and
21 dangerous work and he had been blinded, or lost an eye
22 doing this work and he was asked to go back into precisely
23 the same situation he had been injured in, which blinded
24 him -- he only has one eye left. He has three children and
25 a young wife and so on, and he simply felt that, as much as
26 he would like the \$10,000, he felt this was too much to
27 ask a man to do, to be completely blind for life with his
28 family dependent upon him. So, he requested, in a most
29 humble manner, before the Officers of the Board, to please
30 give him a chance to be re-educated to the grade that was



1 required and so on.

2 Now, this man is presently our safety
3 inspector for the Province of Ontario Organization, and I
4 can assure you he is doing an excellent job. We bring him
5 to your attention because there are many more like Mr. Pike
6 who are not being retrained, and we think the Compensation
7 Board, as good as it is, and they are excellent people to
8 deal with, in some cases they depend upon reports from
9 officers and so on, who simply do not get all the facts
10 across.

11 I will bring to your attention one more
12 thing, the famous case that happened here in Toronto
13 called the Buffalo Bends Case where John McGeehan from the
14 east coast was taken out of a tunnel and was taken to
15 Buffalo and it was in all the headlines of the papers at
16 the time that the man suffered greatly. He is almost in
17 the same position as Mr. Pike, and yet he has been retrained,
18 re-educated and retrained. One wonders why, in the case
19 of the famous, publicized story, that the bother was taken
20 to retrain, whereas it was refused to Mr. Pike.

21 MR. KOSKIE: I would like to proceed onto
22 the question of Fatal Claim Benefits.

23 MR. ESTEY: I would like to ask one ques-
24 tion on light duty, which has been fully dealt with, but
25 I want to be sure you leave behind you what you intend
26 the Commission to consider. On page 13 of your brief, you
27 have one sentence which says, "therefore, we submit that
28 unless an injured workman already has secured light duty
29 employment, or the Board is willing to find him such
30 employment, or to arrange for his retraining or other



1 employment, he should receive full benefits for total
2 disability until such time as he is able to return to his
3 original employment". Mr. Lynch's summary says that
4 compensation should continue at 100 per cent rate until
5 he returns to the type of work he was doing when injured,
6 or until such time as he is retrained and is able to take
7 his place in the provincial work force.

8 Now the question I want to ask is, at the
9 present time, what retraining program do you refer to
10 which some get and some do not get? I take it that is
11 what you are referring to in this last paragraph.

12 MR. GALLAGHER: If the Board, Mr. Commis-
13 sioner, feels that in its opinion the person to be re-
14 trained is capable of it, they go to quite a great deal
15 of trouble to have them retrained in many ways. In the
16 case of John McGeehan, the man who had the bends, he is
17 a welder. Now, the Board did him proud and looked after
18 him very well indeed and we have expressed our gratitude
19 to the Board at the time. We are not forever attacking
20 the Board.

21 THE COMMISSIONER: I suppose during the
22 retraining period he goes back on 100 per cent, does he?

23 MR. GALLAGHER: Yes, I believe during the
24 retraining period they go back on 100 per cent. Of course,
25 we have so many people in our Labourers' organization who,
26 through no fault of their own, including myself, have very
27 little education. In the labourers' group, we are possibly
28 the lowest on the totem pole as far as education is con-
29 cerned. We would not be labourers if we had the education
30 to have a better way of life. We feel that, in our



1 organization particularly, there is a great potential of
2 young men available to be retrained. I don't want to get
3 into the Immigration Act or anything like that, and about
4 bringing the people in unskilled. We have lots of Cana-
5 dians here who are excellent people and who can be retrained.
6 Above all, surely when they have been injured and their
7 livelihood deprived of them, that the Canadian can be
8 given some consideration as well as the immigrant, although
9 I represent both.

10 MR. ESTEY: I didn't want to get you onto
11 the Immigration Act, but who runs the retraining program
12 that was mentioned -- is it the Workmen's Compensation
13 Board?

14 MR. GALLAGHER: I understand the Board
15 does that. Mr. Kerr will correct me if I am wrong.

16 MR. ESTEY: I take it also what you are
17 saying in the last sentence is that compensation should
18 be 100 per cent, as you seek out the alternatives in your
19 conclusion, the compensation continues at 100 per cent.

20 MR. GALLAGHER: Yes, sir.

21 MR. KOSKIE: If I may deal, Mr. Commissioner,
22 with Fatal Claim Benefits, our submissions in that regard
23 will be found at page 15 of the brief, paragraph C. headed
24 "Fatal Accident Compensation" and deals first with burial
25 expense.

26 Upon consulting several funeral homes in
27 Metropolitan Toronto, we have been led to believe that
28 the present average rate for each single funeral is \$750
29 exclusive of cemetery plot and services. Section 37 (1)
30 (a) of the Workmen's Compensation Act allows a maximum



1 of only \$300 for burial expense. For these most tragic
2 of all accidents, we would recommend that the maximum
3 burial expense be increased to \$750 plus \$150 for the
4 cemetery plot, headstone and auxiliary services.

5 (2) Lump Sum Payment

6 Section 37 (5) of the Act provides for a
7 lump sum payment of \$300 to be paid to the widow of the
8 deceased workman. In virtually all cases, this sum is
9 insufficient compensation for the unexpected death of the
10 family breadwinner since immediate financial outlays, such
11 as the obtaining of legal advice, home maintenance, trans-
12 portation, moving expense, etc., often absorb a sum equal
13 to three times the lump sum payment in the space of a few
14 short weeks. Therefore, we would recommend that this
15 lump sum payment be increased to \$1,000.

16 (3) Computation of Survivor Benefits

17 The dependants of a deceased workman killed
18 in the course of his employment through no fault of his
19 own should be entitled to such compensation as will enable
20 them to continue to live in the manner in which they were
21 accustomed at the time of the death by virtue of the de-
22 ceased's wages. Naturally, some workmen are capable of
23 earning higher wages than others, yet Section 37 of the
24 Act completely ignores any difference in earning abilities,
25 and provides only for standard monthly payments of un-
26 realistic amounts to the widows, children and other
27 dependants.

28 We submit that the dependants should be
29 collectively entitled to 100 per cent of the deceased
30 workman's average monthly earnings at the time of his



1 death, monthly payments to be allocated among the widow,
2 children, or other dependants in such portions as the
3 Board shall determine, to terminate according to the terms
4 of present Section 37 (2), 37 (6), 38 and 39. In cases
5 where the average monthly earnings of the workman at the
6 time of his death were lower than the legal minimum wage
7 rate for that particular class of industry (based on 160
8 hours per month) the monthly payments/^{to}be allocated should
9 equal the legal minimum wage rate.

10 Should it be impossible to compute the
11 survivor benefits as above and remain absolutely necessary
12 to retain the present form of computation based on monthly
13 lump sum payments to particular dependants, we would then
14 recommend that Section 37 (3) (b) and 37 (3) (c) be amended
15 by deleting the clause "not exceeding in the whole \$150.00"
16 so as to eliminate discrimination against large families
17 of deceased workmen.

18 I have no further submissions to make under
19 that particular heading, Mr. Commissioner. We do, however,
20 have certain submissions to make with respect to, perhaps
21 financial matters. I don't know whether it has been
22 decided to go on with that at this stage, or does the
23 Commissioner wish us to wait until later?

24 THE COMMISSIONER: I think we will have
25 to put that one over, Mr. Koskie, because there are a
26 number of others to be heard on the present matter.

27 MR. KOSKIE: We have no further submissions,
28 Mr. Commissioner, unless either yourself or Mr. Estey have
29 any questions to put to either myself or my clients.

30 MR. ESTEY: I would just like to ask one



1 question. On page 16 you say that the dependents should
2 be entitled to 100 per cent of the deceased workman's
3 average monthly earnings allocated amongst dependants
4 as the Board determines, and so on. My question is this:
5 I take it what you are suggesting is that we move off the
6 rigid base that it is on in Section 37 (3) which is a
7 fixed payment without reference to the deceased's earnings;
8 also that a fixed payment without reference to the fluctuat-
9 ing value of the dollar, and a change necessitates an
10 amendment to the Act and so you say we move off that and
11 key it to the man's earnings, and if total disability is
12 to be compensated at a percentage of his earnings, I take
13 it you are saying that in the case of a death the depedant
14 would get the same percentage of the earnings of the deceased
15 as though the workman had stayed alive and was totally,
16 permanently disabled?

17 MR. KOSKIE: That is right.

18 MR. ESTEY: Thank you.

19 The next, Mr. Commissioner, and dealing with
20 the first topic, is the Ontario Forestry Industries Assoc-
21 iation. I see no representatives on that organization
22 here today. Also making representation on this topic, is
23 the Ontario Medical Association. Perhaps we might save
24 time, Mr. Commissioner, if we asked those who are here on
25 topic 1, who have not spoken, if they would indicate their
26 Association. There are others who have spoken to me, who
27 cannot be here this afternoon and who have observers here.
28 They are the United Electrical Workers and we will now
29 call upon the Provincial Building Trades Council.

30 MR. PETRONSKI: Mr. Chairman, my name is



1 Stan. Petronski, Chairman of the Provincial Building Trades
2 Council
3 /and Mr. Hank Hove, our Secretary Treasurer, was unable to
4 present his brief. So I am pinch-hitting for him. My
5 colleague here, Mike Nocols, is also a Vice-President of
6 the Council.

7 This is the introduction to our brief, which
8 is short:

9 This Brief, with its combination of points
10 dealing with the Workmen's Compensation Act, is presented
11 on behalf of the affiliated Local Unions and Building
12 Trades Councils in the Province of Ontario and is represen-
13 tative of the views and thinking of the Building Tradesmen
14 in Ontario's largest industry.

15 We do not raise a great number of points,
16 but we deal at length with the major problems facing us
17 and the injured workmen which need immediate attention.

18 This is point one which we are dealing
19 with today, "Earnings":

20 One of the fundamentals enunciated by Sir
21 William Meredith was that during periods of disability
22 a workman should receive a percentage of his earnings.
23 When Sir William made his report in 1914, stating an
24 annual salary limit of \$2,000.00, he did so to differen-
25 tiate between the employer and the work people. Bear in
26 mind that most employers in those days were persons
27 actually directing company policy and were in the main
28 entrepreneurs. Bear in mind also that the wage rate for
29 skilled machinists at that time, as an illustration, was
30 approximately 11 cents per hour.

It is our contention that workmen during



1 periods of total temporary compensable disability should
2 receive a minimum of 80 per cent of actual earnings.
3 Because so many work people earn in excess of \$6,000.00
4 per year, at the present time their compensation payments
5 are, in essence, only forty, fifty or possibly fifty-five
6 per cent of earnings.

7 POINT TWO

8 WAITING PERIOD

9 It is our contention that there is no longer
10 any necessity of a waiting period before a workman is
11 entitled to the payment of compensation. The present Act
12 provides for calendar in the so-called waiting period and
13 in many instances this must only represent one day. It
14 is recognized that by providing entitlement to the work-
15 man for compensation payments beginning with the first
16 shift following his compensable accident would speed up
17 the handling of claims, avoid many enquiries and in es-
18 sence would reduce overall costs. In addition there is
19 no justifiable reason why a workman should lose three full
20 days's salary, as at present, because of injuries result-
21 ing from an accident which occurred through no fault of
22 his own.

23 POINT THREE:

24 SECTION 41 - TEMPORARY PARTIAL

25 DISABILITY

26 A workman is on a payroll and employed at
27 the time of his accident, otherwise he would have no
28 entitlement to benefits under the Act. The injuries re-
29 sulting from the accident have taken him completely out-
30 side the labour force and it is our contention that he



1 should be entitled to full compensation payments until he
2 is returned to employment or until he has sufficiently
3 recovered to return to the labour force and therefore, have
4 entitlement to the facilities of the National Employment
5 Service and payment of Unemployment Insurance benefits.

6 This Section of the Act is most unjust in
7 that the Board rules a man is 25 per cent or 50 per cent
8 temporarily partially disabled and reduces his payments
9 accordingly. The National Selective Service will not
10 attempt to locate employment for him because, according
11 to them and based on the Board's findings, he is still
12 partially disabled. The fact that he does not qualify for
13 National Employment Services also bars him from the pay-
14 ment of Unemployment Insurance benefits.

15 THE COMMISSIONER: This is the third time
16 this has been stated here: This seems to be in conflict
17 with what is stated in that letter that we filed from the
18 National Employment Service, that they are prepared to
19 seek employment for you.

20 MR. PETRONSKI: In certain trades of the
21 construction industry, even though on a partial 25 and 50
22 per cent, they get their payments if they are over and
23 above the Unemployment Insurance of \$36 a week, and there-
24 fore, they are not on Unemployment Insurance. They could
25 equal the value and, therefore, they are cut off to unem-
26 ployment insurance.

27 THE COMMISSIONER: They might cut them
28 off Unemployment Insurance, but you are referring here to
29 the National Employment Services. They are, apparently,
30 prepared to offer their services to get them employment



1 on a partial basis -- lighter employment.

2 MR. PETRONSKI: If they change their
3 classification. In trades such as mine, like the boiler-
4 makers, or carpenters, or machinists, they would have to
5 change their classification of work in going onto light
6 duties. In other words, if the boiler maker contractor
7 cannot provide light work for him then the service

8 will find work for him, but it would have to be
9 outside of his trade. This is the only time the Unemploy-
10 ment Insurance will provide light duties for him. He has
11 to reduce to go away from his trade.

12 Further to this, on other occasions an
13 injured workman is informed that he has recovered suffici-
14 ently from his innuries to do light work. In the Building
15 and Construction Industry there is no such thing as light
16 work.

17 When an injured workman in this position
18 is disabled he is totally disabled and he remains totally
19 disabled until the Workmen's Compensation Board changes
20 his status. They can only do that by completely retrain-
21 ing him to do the so-called light work. But instead the
22 Workmen's Compensation Board continually tells him to seek
23 this light work, which he cannot find, but they just will
24 not take this into consideration and they make no attempt
25 to find out if there is any light work in this injured
26 workman's trade available to him. While this is going on
27 the injured workman is cut off from his compenation pay-
28 ments and this is most unjust.

29 POINT FOUR:

30 C A L C U L A T I O N O F E A R N I N G S



1 The present system of calculating earnings
2 of the injured workman over a period of twelve months prior
3 to his injury is an injustice to the injured workman
4 because of the ups and downs of employment that we have in
5 the Building Construction Industry.

6 The twelve month period preceeding the
7 accident could be a very slow period in construction and
8 the workman's earnings would be calculated during this
9 slow period and his weekly compensation payments would
10 be figured accordingly, thereby giving the injured workman
11 a very inadequate weekly payment to subsist on.

12 We feel this period of calculation of
13 earnings should be shortened from twelve months to the
14 previous four weeks. Thus giving the Board a more accurate
15 understanding of the workman's earning capabilities prior
16 to his accident and, insuring that the workman will receive
17 the right percentage of the salary he could normally earn
18 if work was available.

19 THE COMMISSIONER: That might work out
20 that he would get less. I mean to say that if he happened
21 to be out of work for a month, say, or a week prior to
22 his injury if his compensation were calculated on his
23 previous 4 weeks earnings he might get less.

24 MR. PETRONSKI: Well, we are referring
25 to the four weeks which would be on an hourly rate for
26 the last four weeks he has worked for his previous employer,
27 more than on a weekly basis. If he was working for more
28 than four weeks prior to that on an hourly basis, it would
29 be more than he would on a 12 month basis.

30 POINT FIVE:



1 P A Y M E N T S T O D E P E N D A N T S

2 By setting a statutory amount of pension
3 for dependants legislation, in our opinion, is in conflict
4 with the fundamentals established by Sir William Meredith
5 in that payments should bear a relationship to the man's
6 earnings, so the workmen's family will not be forced to
7 accept a lower standard of living than that which he has
8 established by reason of his skills and wages.

9 Let us make our position very clear that we
10 do not think a pension of less than \$100 a month can be
11 justified any place in this affluent province. We do say,
12 however, that while a widow in receipt of \$100 monthly
13 pension may be able to exist quite comfortably in Birdseye
14 Centre, \$100 a month would not pay either house rent nor
15 taxes in any of our metropolitan areas.

16 We contend that a widow entitled to benefits
17 under Workmen's Compensation legislation should receive at
18 least 60 per cent of her late husband's earnings as long
19 as she remains a widow. In this way she will be able to
20 maintain herself at a level close to that to which she
21 had been accustomed by virtue of her late husband's earn-
22 ings. We feel that dependant children should be provided
23 with a monthly allowance sufficient to feed and clothe
24 them as well as to provide the cost of their education.
25 The widow, by reason of obtaining a minimum of 60 per cent
26 of her late husband's earnings, would be able to provide
27 shelter for her dependant children.

28 Most established pension schemes recognize
29 and accept such a principle since most have provisions
30 that should the husband die either while on pension or



1 while in service entitling him to a pension, the widow
2 would receive a minimum of half the monthly pension to
3 which her husband was entitled.

4 Now, this is our brief pertaining to the
5 first five clauses. I would like Vice-President, Mike
6 Nichols to add something to that on our summation of the
7 brief, Mr. Commissioner.

8 MR. NICOLS: Mr. Commisisoner, first I
9 want to offer an apology to you, sir. It is not a matter
10 of disrespect that I have a sport shirt on, but I was not
11 informed that I would have to come before this body until
12 five minutes to two, so please excuse me.

13 THE COMMISSIONER: It is quite all right.

14 MR. NICOLS: I would just like to add to
15 the printed submission, these remarks. First, we would
16 ask that consideration be given by this Commission, to the
17 peculiarities of the construction industry as such which
18 is granted in all forms of, say, government, Ontario
19 Labour Relations Board, for one, which has a separate
20 section which deals with the construction industry because
21 of, we say, the **vagaries** of it. That would be about the
22 word for it.

23 Also, we feel that under the accident pre-
24 vention there is a further demarcation that the Compensa-
25 tion Board realizes and notes, namely the Construction
26 Safety Association, Class 27, I think it is, whereby the
27 construction features of the employers are dealt with,
28 especially, not in the overall scheme of the Industrial
29 Accident Prevention Association.

30 With these two things in mind, particularly,



1 Mr. Commissioner, we would ask - and this is a very poor
2 excuse, but it is true - of the communications that became
3 wrongly addressed. Our Secretary-Treasurer, Mr. Kobryn,
4 lives in 665 Brule Avenue. Your communication of October
5 21st went to 22 Carlton Street where we did have an office
6 of the Provincial Building and Trades' Council and we
7 didn't have the proper time to present a supplemental
8 brief. So we are asking, Mr. Commissioner, on these two
9 grounds if you would grant us the privilege of presenting
10 a supplemental brief dealing with the peculiarities of
11 the construction trade, especially.

12 THE COMMISSIONER: Your existing brief
13 does not address itself to this?

14 MR. NICOLS: No, it does not.

15 THE COMMISSIONER: Very well.

16 MR. NICOLS: And I presume the Secretary
17 would advise us when it will be necessary.

18 THE COMMISSIONER: It will probably be
19 sufficient if you put in a written submission.

20 MR. NICOLS: We would be glad to do that,
21 because under the terms of reference here, we completely
22 missed it.

23 MR. ESTEY: When would you like to do
24 that?

25 MR. NICOLS: If you would give us a couple
26 of weeks anyway. If you can, we would be appreciative of
27 it, Mr. Commissioner. As we say in the construction, do
28 the pointing job on the bricks so we can put them in
29 properly.

30 MR. ESTEY: All right, if you will address



1 that to the Secretary, Mr. Johnson, Mr. Nicols, I am sure
2 that we will then get in touch with you and decide whether
3 you wish to present it orally or to take it as read, but
4 if you would get it in as quickly as you can, you will
5 help us greatly.

6 MR. NICOLS: Thank you.

7 MR. ESTEY: I would just like to ask a
8 couple of questions. Dealing with the percentage of wages
9 which you say should be taken into account in computing
10 the compensation, you suggest the minumum be 80 per cent.
11 As you know, the statutory maximum now is 75 per cent and
12 I take it that what you are saying is, the reason you give
13 for that is that, in effect, because of higher wages, the
14 result is that men get 40, 45 per cent of their wages as
15 compensation. I take it what you are saying, therefore,
16 is that this Commission should recommend that either the
17 75 per cent be increased or that the ceiling be increased.

18 MR. NICOLS: This is one of the points
19 that we intended to cover. We would suggest at the present
20 time, taking into consideration the overall, the ceiling
21 would naturally have to be increased if the necessity for
22 the 80 per cent was proven to be such. The reason we
23 mention the figure 80 per cent is the fact - I have not
24 got the full figures here, Mr. Commissioner, but a majority
25 of our crafts of which there are 17 in the building trades,
26 the construction trades, have benefit and pension payments
27 which are not considered in the picture of the 75 per cent.
28 If a member of ours who was covered by pension and welfare
29 payments, goes on compensation, then his payments as such
30 do not go into the fund and after a certain period of



1 time, he gets himself lapsed, as it were.

2 I would say that this is one of the things
3 which, because of this change in the situation, we would
4 ask that we mention in the brief to come later.

5 MR. ESTEY: You would like to deal with
6 that later also?

7 MR. NICOLS: We would have it in more
8 detail, Mr. Commissioner.

9 MR. ESTEY: Moving on to one more point,
10 you say that the computation of earnings should not be
11 averaged on a four-week basis and apart from getting into
12 that discussion, I want to know whether you are suggesting
13 that when the Board averages the earnings, they include
14 all the employers during that period.

15 MR. NICOLS: We actually suggest in this,
16 Mr. Commissioner, - and that is why I tapped my confrere
17 on the leg - the ideal basis for coming up with the figure
18 of compensation in the construction industry in our estimation
19 is the hourly rate that the man gets; in other
20 words, if it is a percentage basis/^{it}should be based on a
21 40 hour week on the basis of his hourly rate.

22 MR. ESTEY: The question I want to direct
23 you to is not that, we have been all through that. What
24 I want you to tell us about, to expand on your brief, is
25 when you calculate the man's average wage, and if he has
26 just changed employment and you are going to go back a
27 period, then my question to you is: Is it your submission
28 on page 3, that the Board should count all the employees
29 back to the average period, whether it be a month or
30 12 months?



1 MR. NICOLS: Yes, it is going to be the
2 same rate.

3 MR. ESTEY: All the employers' payments
4 to the man are taken into account, that is what you are
5 saying?

6 MR. NICOLS: That is right, it is going
7 to be the same rate.

8 MR. ESTEY: Well, whether it is the same
9 rate or not, we have had another submission this afternoon
10 which is not the same as that and I am trying to compare
11 them. What I am trying to get from you is what you mean
12 on page 3. Do you mean that the man's average wage shall
13 be the wage which he received from all employers during
14 the test period.

15 MR. NICOLS: Maybe you have got me lost
16 and I am going to explain it my way.

17 MR. ESTEY: All right, go ahead.

18 MR. NICOLS: This could be applicable in
19 only one part, let us put it this way, only one part of
20 the construction industry, namely the labourer, because
21 there are different rates in the labourer's union, but
22 all the other classes, there is only one rate.

23 MR. ESTEY: I am only talking to you about
24 what you know about and if there can only be one rate,
25 then that is the answer to it.

26 MR. NICOLS: That is right.

27 MR. ESTEY: But supposing the man changes
28 his jobs, we have had a case this afternoon where the man
29 was a craftsman and he changed jobs and he got hurt the
30 first five minutes of the new job at a fraction of his



1 craft rate. My question to you is what your trade union
2 is asking this Commission in that circumstance, is to
3 average the man's earnings over a base period of four
4 weeks.

5 MR. NICOLS: That is right.

6 MR. ESTEY: One last question. On page
7 4 you say that the widow should get at least 60 per cent
8 of the late husband's earnings. Then this sentence comes
9 after that:

10 "We feel that dependant children should
11 be provided with a monthly allowance
12 sufficient to feed and clothe them as
13 well as to provide the cost of their
14 education."

15 That, I take it, is in addition to the
16 widow's allowance?

17 MR. NICOLS: That is right.

18 MR. ESTEY: Well, the Act has a schedule
19 of payments to dependants under sub-section (f) subsection
20 (iii) and that is based at \$50 to each child not exceeding
21 on the whole, \$150. Do you have any views as to what the
22 rate should be that you have referred to on page 4? Is
23 the present statute adequate?

24 MR. NICOLS: I would say it is inadequate
25 especially when you turn around and read the papers in the
26 last few weeks. The cost of living has gone up so much
27 there should be some compensation. What was applicable in
28 1952 is not applicable in 1966.

29 MR. ESTEY: Well this was adopted in 1960.
30 Do you have any proposal how that should be computed,



1 should it be a fixed sum or percentage of the widow's per-
2 centage or what views do you have on that?

3 MR. NICOLS: My personal view, and I haven't
4 discussed it with my confreres because we didn't go into
5 it in that detail, I do think that it should be for the
6 sake of a standard, a cost of living index, based on a
7 certain figure. If that was accurate and agreed and
8 sufficient at that time, then a cost of living index, based
9 on the point of index at that time, and the adjustment be
10 made from that. We suggest that is the fairest way of
11 doing it if the base is practical and palatable, if that
12 is the word to use.

13 MR. ESTEY: Fine, thanks Mr. Nicols.

14 MR. NICOLS: Thank you.

15 MR. ESTEY: United Electrical Workers.

16 MR. PATERSON: Mr. Commissioner, my name
17 is Pat erson and my colleague, Mr. Gulliford. I should
18 not take up too much time on this thing. On page 23,
19 number 4:

20 That there be no reduction in level of
21 compensation payment unless and until employment is
22 available for the workman.

23 The present practice of the Board with
24 respect to workmen who are medically certified as partly
25 recovered, is to reduce the amount of compensation paid
26 without regard to whether the workman is able to return
27 to gainful employment, or the availability of such
28 employment.

29 That the Act permits this is an injustice,
30 and relieves the employer of the injured workman of an



1 obligation which in all fairness he should be compelled
2 to accept. For purpose of illustration we quote the facts
3 in a recent claim in which we are interested:

4 "Mr. A. was injured and paid full
5 compensation for a period of six
6 weeks. On instruction of the Board
7 he was then examined by his doctor,
8 who reported to the Board that he
9 was capable and available to perform
10 work of a lighter nature than the
11 work he performed prior to the
12 accident.

13 "The Board informed Mr. A. of the
14 doctor's report, and at the same
15 time reduced the compensation
16 payment by 50%.

17 "Mr. A. immediately applied to
18 his employer for the type of
19 work which his doctor had certified
20 him as capable of performing. His
21 employer informed Mr. A. that no such
22 work was available, and that he
23 would not be considered for re-
24 employment until he was fully
25 recovered and able to do his old job."

26 We are aware and agree that the Workmen's
27 Compensation Act is based on providing benefits for
28 disability in the event of occupational accident or
29 illness. We do not agree, and vigorously protest against
30 the interpretation that such benefits should have no



1 relation to the availability of employment. A partly
2 disabled workman under conditions where employment of a
3 particular type is not available, is, for purpose of gain-
4 ful employment, fully disabled and unless and until work
5 which he is able to perform becomes available, there
6 should be no reduction in benefits.

7 We have also encountered situations where
8 an employer has refused to re-employ an injured workman
9 even following his being medically certified as fully
10 recovered. The Act provides no compulsion on an employer
11 to provide light work or any work at all.

12 The Act should be amended to provide (a)
13 an obligation on the employer to re-employ an injured work-
14 man, and (b) that compensation benefits not be reduced
15 where there is partial recovery, unless the workman is able
16 to secure employment on work he can perform.

17 5 - 6 - 7 - 8

18 5. The lump sum payment on death of an insured
19 workman to be increased to \$1,000 with all reasonable
20 funeral expenses to be paid in addition.

21 6. Pensions and claims based on prior injuries
22 to be re-adjusted upward based on present wage levels
23 paid for the particular occupation(s) on which the
24 accident(s) occurred.

25 THE COMMISSIONER: Just hold it for a
26 moment. Yes, go ahead.

27 MR. PATERSON: 7. Provision for the
28 upward adjustment of compensation payments based on the
29 cost of living. Widows' and dependents' pensions to be
30 adjusted to fully reflect the change in the cost of living



1 8. The amount of compensation to be the equi-
2 valent of full earnings, less statutory deductions.

3 The four proposals above have to do with
4 the standard of living of injured workmen and their
5 families and, in our view, require little argument to
6 justify.

7 The needs of workmen and their families
8 are not reduced when misfortune strikes in the form of
9 accident or illness. Indeed, need increases under this
10 condition. Therefore, we contend that at least the former
11 level of income, in real dollars, should be maintained for
12 the duration of the disability, or following the death
13 of the insured workman.

14 On death of an insured workman, the im-
15 mediate expenses would certainly be substantially in
16 excess of the death benefits, of the \$300 lump sum, and
17 funeral costs up to \$300 presently provided. The proposal
18 we make is, in our opinion, fair and reasonable.

19 The present provision where disability pen-
20 sions, and certain other payments, are based on the earn-
21 ings at the time of accident, which may have been 20 years
22 ago, is quite unreal from the point of view of need and
23 equity. Likewise, need demands that the value of the
24 compensation dollar be maintained during the period of
25 disability and/or the full period when a family must be
26 raised after loss of the breadwinner.

27 We appreciate that the present rate of
28 disability benefits of 75 per cent of earnings, being
29 tax exempt, brings the injured workman's income reasonably
30 close to his actual earnings when on the job. There is



1 no sound reason why it should be less, therefore we propose
2 the Act be amended to provide benefits based on the net
3 income, i.e. full earnings, less statutory deductions.

4 Now, this is all at the moment. We have
5 down here a provision for clothing allowance. I am just
6 wondering if it should come up under this subject.

7 THE COMMISSIONER: Well, it might be as
8 good a place as any.

9 MR. PATERSON: I believe it has relevance,
10 Mr. Commissioner.

11 9. Provision for clothing allowance in case of
12 loss or damage through accident. Allowance for continu-
13 ing need of special clothing or footwear, or damage
14 through abnormal wear caused through the use of supports
15 or other orthopaedic apparatus.

16 In certain types of accidents the cost to
17 workmen arising from loss or damage of clothing is quite
18 substantial. In other cases the costs are continuous.
19 In one case which came to our attention, we were told
20 that the cost borne by the workman is in excess of \$100
21 each year.

22 In some cases the Board makes provision
23 for special footwear, trusses, and other such apparatus.
24 However, no provision is made for the losses and needs
25 we have referred to above. The Act should provide full
26 coverage on cost of these items.

27 This is our submission, Mr. Commissioner.

28 THE COMMISSIONER: Thank you, Mr. Paterson.

29 MR. ESTEY: Are you the only spokesman,
30



1 Mr. Paterson?

2 MR. PATERSON: Well, any questions we can
3 help you with, we will deal with them together.

4 MR. ESTEY: I don't have very many, but
5 I would like to know, though: I take it that the light
6 work proposal that you are making on page 24 is simply
7 this, that the test as to whether you get compensation
8 should not be dependant on what the doctor certifies in
9 the way of capacity to work, but two things; one the
10 capacity to work and secondly, the availability of suit-
11 able work.

12 MR. PATERSON: That is right, sir.

13 MR. ESTEY: He has the capacity but not
14 the work or he hasn't the capacity and then he gets his
15 compensation, and that is what you are saying?

16 MR. PATERSON: Right.

17 MR. ESTEY: The compensation which he gets
18 under those circumstances, I take it, you say should be
19 the full compensation and not a fraction of it?

20 MR. PATERSON: That is right.

21 MR. ESTEY: If I understand you correctly,
22 you are saying there are no circumstances where partial
23 compensation has any application except in those cases
24 where he can work, does find light work, but his income
25 is less than his former trade?

26 MR. PATERSON: That is right.

27 MR. ESTEY: That is the whole thing in an
28 eggshell.

29 MR. PATERSON: Yes.

30 MR. ESTEY: Could you tell me what the



1 difference is between your proposals number 6 and 7, at
2 the foot of page 24 and the top of page 25? One is
3 pensions and claims based on prior injuries to be re-adjusted
4 upward based on present wage levels, and the second one is
5 provision for upward adjustment of compensation payments
6 based on the cost of living. Now, do you mean them both
7 or are they alternative methods of gearing up prior com-
8 mitments by the fund?

9 MR. PATERSON: One is the pensions, I
10 assume.

11 MR. ESTEY: The first is pensions and
12 claims.

13 MR. GULLIFORD: I suggest, Mr. Estey,
14 that on 6 we are referring to claims and/or claims that
15 arise from previous injuries, cases that have reopened.

16 MR. ESTEY: That have reopened, not just
17 cases that are on the books and the payments are going
18 out?

19 MR. GULLIFORD: No.

20 MR. ESTEY: Those are covered in number 7.

21 MR. GULLIFORD: That is right. In other
22 words we are suggesting that if a worker has established
23 a claim of X number of dollars claimed on a previous
24 injury and there is a recurrence or re-aggravation whereby
25 another claim is allowed, it should not be based on the
26 original amount.

27 THE COMMISSIONER: At the moment it is
28 based on the original.

29 MR. ESTEY: But at any rate, any award
30 he is getting on the original should be geared to the cost



1 of living, under number 7.

2 MR. GULLIFORD: Yes, that is right.

3 MR. ESTEY: In order to accommodate number
4 8, are you really suggesting that somebody make the com-
5 pensation payments taxable? That is the only way you can
6 really equate them to the income that a man received when
7 he was working, I suppose.

8 MR. PATERSON: I think it points out there --

9 MR. ESTEY: You can't get the amount of
10 compensation equivalent to full earnings less statutory
11 deductions even if you take into account income tax
12 deductions, can you, because the deduction under the
13 Income Tax Act is a fixed statutory deduction. It has
14 a remote relationship to the payment in some cases, but
15 I take it what you are saying is that you should deduct
16 all the applicable, statutory deductions and the result
17 paid over to the man is taxable income.

18 MR. PATERSON: And there is no reason
19 why it should be any less.

20 MR. ESTEY: And therefore, he is in the
21 same position as before; that is, in effect, what you
22 are saying.

23 MR. PATERSON: Yes.

24 MR. ESTEY: Thank you very much.

25 THE COMMISSIONER: We will not be going
26 on with any more this afternoon. We will adjourn until
27 10:00 a.m., tomorrow morning.

28 --- Adjournment.
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30

